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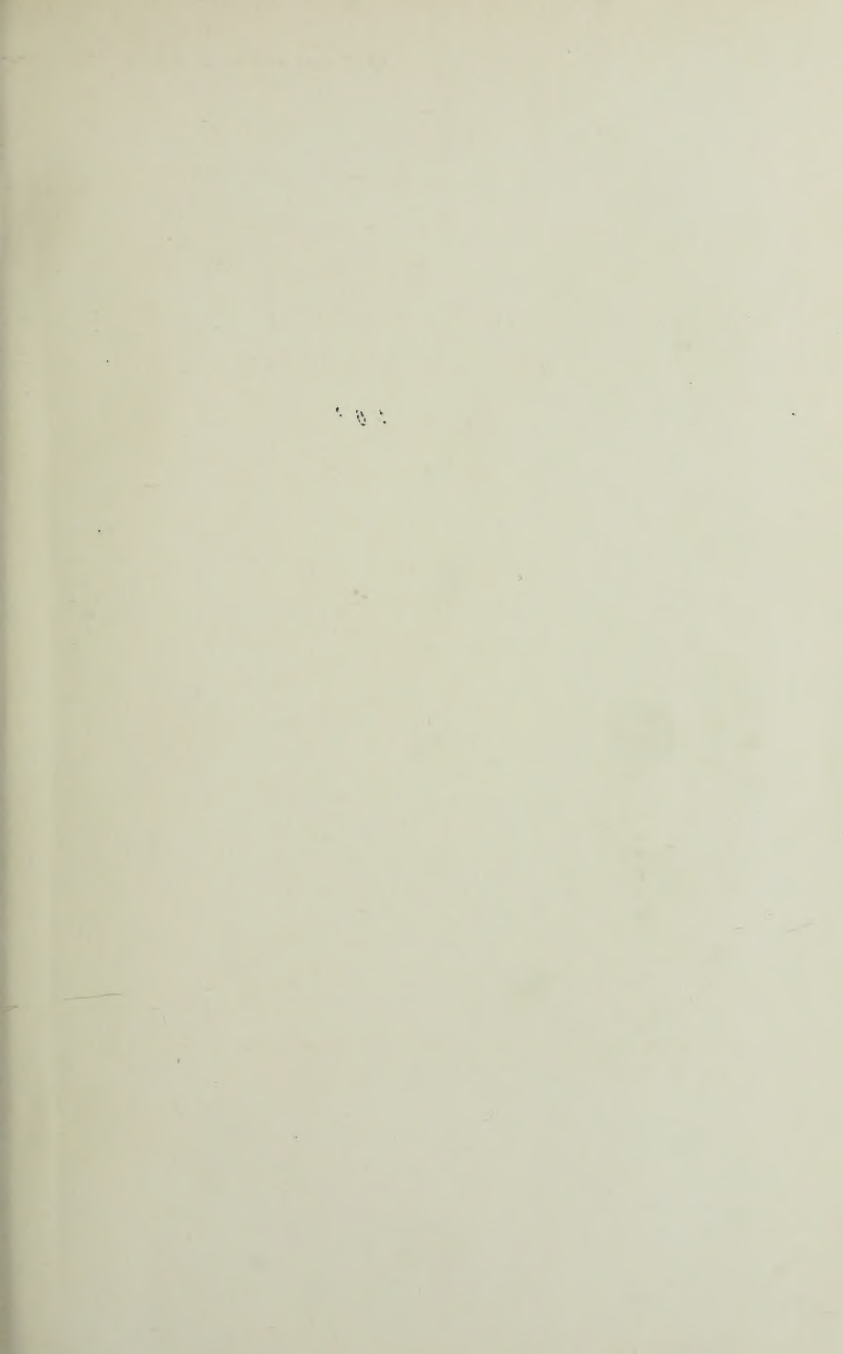
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No. 1883

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME VII.

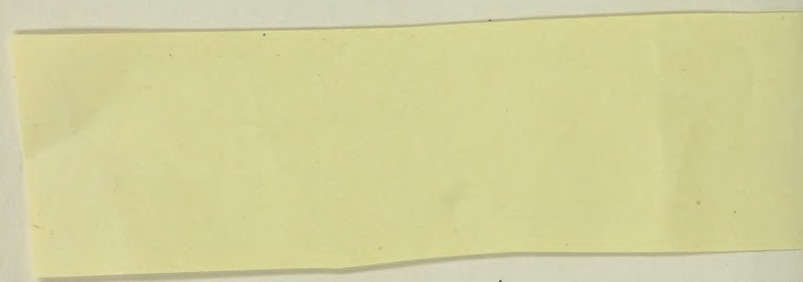
(Pages 2401 to 2800, Inclusive.)

Upon Appeal from the United States Circuit Court
for the District of Idaho, Central
Division.

FILED

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records of U. S. Circuit
Court of Appeals
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Division.**

(Testimony of William R. Coleman.)

Q. Did you go to that corner?

A. Yes, I went across what I supposed was one side of the place, that was just across the end; it laid in a narrow strip, and he said that was about where the other corner would come; of course there was no mark on the quarter, at least he said there wasn't any mark there; I didn't go all over the land; it was pretty rough country in there.

Q. Mr. Coleman, did you talk with any other persons with the view of having them locate on any timber land so that they might make some money out of it?

A. No, not that I remember of.

Mr. KEIGWIN.—Do you know how far the Star ranch is from Boise?

A. No, sir, I do not.

Q. How far would you say it is, approximately?

A. By wagon road I would think it was about twenty-eight or thirty miles.

Q. Do you remember how much your team cost you, for your party, the day you went up there?

A. No, I don't, I don't recollect; I think it cost us something like \$3.50 apiece.

Q. How many days were you gone?

A. That was for the trip. Why, we went out of here in the afternoon and came back—and stayed there over night, was there that day, and came back that evening or night; I think it was ten or eleven o'clock when we got back into Boise.

Q. Did that \$3.50 include your board up there, or did you pay it?

A. I don't recollect; you see I was working there for Mr. Ellis, and I paid the money to Mr. Ellis; he

(Testimony of William R. Coleman.)

was running the shop and doing work for the Wood River barn, and had it charged to Mr. Ellis, and I paid Mr. Ellis.

Q. I think you said to Mr. Bundy that you wouldn't accept any money from Mr. Ellis because you thought it would be wrong?

A. From Mr. Ellis?

Q. Mr. Kinkaid.

Mr. BUNDY.—He didn't say quite that, Mr. Keigwin.

A. No, I said that I wouldn't have went to Mr. Kinkaid for money for myself, but if he had offered it to me I couldn't say what I would have done; I might have taken it.

Mr. KEIGWIN.—Q. What I am trying to get at is this: Was it your understanding at that time that it would be unlawful for you to borrow money with which to prove up?

A. It was my understanding that through his locating me I wouldn't expect to get any money from him, didn't expect to.

Q. You misunderstand my question. Did you understand at that time that it would be a violation of the law if you were to prove up on borrowed money?

A. Well, I understood, I understand that if a man locates you and he furnishes you the money to make final proof and prove up, that it isn't right; that is what I understood, and I understood at that time that it would be a violation of the law.

Mr. BUNDY.—To borrow from the man that

(Testimony of William R. Coleman.)

locates you?

A. Yes, sir, to borrow from the man that locates you.

Mr. KEIGWIN.—Q. You still understand that to be the law, do you?

A. Yes, sir, if a man makes any agreement, I do.

Q. Do you remember that when you made final proof this question was asked you and this answer given by you, which I now proceed to read: "Question 17. Where did you get the money with which to pay for this land, and how long have you had same in your actual possession? A. From my earnings. Have had money about three months."

A. Yes, that is the answer that I made.

Q. That answer was not correct, was it?

A. Is this in the final proof?

Q. Yes.

A. My recollection is that I answered that I had had the money for some time; I don't remember that I said I had had it for about three months; I remember that I did say it was money from my earnings, and some I had saved from my business in the shop.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Coleman, what time did you leave Star ranch to go out and look at this land?

A. I think about eight o'clock in the morning.

Q. What time did you return?

A. I think it must have been—it was about four o'clock.

Q. What did you do during the interval besides

(Testimony of William R. Coleman.)

going and looking at your claim, what did you do, if anything, between eight o'clock and four, except look at your claim?

A. That is all we done; we went out there and back.

Q. How far do you think you went?

A. I thought we went about six miles.

Q. But the map shows that you went about ten, if you went to your claim? A. Yes, sir.

Q. How did you go—walk or drive?

A. Went afoot to see the timber.

Q. You didn't understand then, and don't now, Mr. Coleman, that you was violating the law to borrow money on your credit in the open market from somebody that didn't locate you, for proving up?

A. No, sir, I understood that if a man had confidence in me to loan me the money, I would give him my note for it.

Mr. BUNDY.—You are absolutely right, Mr. Coleman.

(Witness excused.)

[Testimony of Alexander T. Ellis, on Behalf of the Complainant.]

ALEXANDER T. ELLIS, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Alexander T. Ellis?

A. Yes, sir.

(Testimony of Alexander T. Ellis.)

Q. Where do you reside, Mr. Ellis?

A. 910 Grove.

Q. This city? A. Yes, sir.

Q. How long have you resided there, or in Boise?

A. I have been in Boise since the 9th day of November, fifteen years last November.

Q. What is your occupation?

A. Blacksmith.

Q. Are you in that business now?

A. No, I ain't.

Q. What is your business now?

A. Oh, sometimes ranch a little; used to run the Kenmore House, and traded that off for a ranch.

Q. The Hotel Kenmore?

A. Yes, sir, Hotel Kenmore.

Q. You were a blacksmith though in 1903?

A. Yes, sir, 1903, that was the year I built the house.

Q. You took up a claim under the Timber and Stone Act in 1903, did you?

A. Yes, sir, I took up a claim; yes, it was that season.

Q. Now, who spoke to you about taking up a timber claim?

A. Well, sir, nobody spoke to me particular about it, but I was talked to, there was a good many talking about it, and around about it; it was talked on the street and talked in the shop; in the shop I heard mention of it.

Q. Was Mr. Coleman working for you at that time?

(Testimony of Alexander T. Ellis.)

A. He was working with me at that time.

Q. Was Mr. Rice J. Harbaugh working for you at that time?

A. No, sir, he was working for somebody else.

Q. Did you talk with these gentlemen about taking up a timber claim?

A. I must have undoubtedly talked about it, but I couldn't tell you what I did say.

Q. Did you talk to Mr. John Kinkaid about taking up a claim? A. No, sir.

Q. Did Mr. John Kinkaid live at your house at that time?

A. No, sir, I didn't know the man at that time.

Q. You eventually decided to take up a timber claim?

A. Yes, Coleman, Faraday, and Harbaugh was going to take up one, and I told them I would go with them.

Q. They had told you they were going to take up a claim? A. Yes, they were going.

Q. How long before you went did they tell you they were going to take up one?

A. Oh, it was a few days; I couldn't tell you just how many; it was the day before, I think it was, a day or two days before that, I made up my mind to go.

Q. Do you remember what day of the week you went? A. No, I couldn't tell you.

Q. Do you remember what day of the week you returned?

A. No, I couldn't tell you that; I know it was

(Testimony of Alexander T. Ellis.)

dark when we returned; it was way in the middle of the night some time.

Q. Friday gets just as dark as Saturday, don't it?

A. It was between two days when we returned.

Q. Who arranged for this party to go?

A. I don't know about that; I went to the Wood River Stable and got the team, I hired the team.

Q. Do you know what that team cost?

A. I couldn't tell you that now.

Q. Do you know who paid for the team?

A. We each paid for our own parts.

Q. You paid for the team and the others paid you?

A. I couldn't say for sure, but I know each man paid his own part, but I hired the team.

Q. And you don't recollect whether you paid all of it or whether each one went there?

A. Well, if they paid it to me, I paid it to the livery stable man; I don't remember how that was, but each man had to stand his own expenses.

Q. You were doing work for the Wood River barn?

A. Yes, I was doing work for them.

Q. What is your recollection—that they were in your debt and you charged them, and the rest of the men paid you?

A. As far as that is concerned, I couldn't tell you, but I know I went there for the team.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, of Alexander T. Ellis, and ask you whether or not that is your signa-

(Testimony of Alexander T. Ellis.)

ture to that paper.

A. Yes, that is my signature.

Q. I show you non-mineral affidavit of the same date, of Alexander T. Ellis, and ask you if that is your signature.

A. Yes, sir, that is my signature.

Q. I show you the testimony of Alexander T. Ellis, given on final proof, December 11, 1903, and ask you if that is your signature?

A. Yes, sir that is.

Q. I show you cross-examination of Alexander T. Ellis, on the same occasion, and ask you if that is your signature to that paper?

A. Yes.

Q. I show you deed, dated January 4, 1904, by Alexander T. Ellis, and Josephine Ellis, to George S. Long, and ask you if that is your signature to that deed?

A. Yes, sir.

Q. And is that your wife's signature?

A. Yes, sir.

Q. Did you know when you left here who was going to locate you?

A. Yes, there was a man going to be up at the Star ranch to locate us.

Q. Did you know who it was?

A. Well, I had heard his name.

Q. Was it Patrick Downs?

A. Yes, sir.

Q. Who told you that?

A. Well, I don't know just exactly, but then I expect it was Coleman or Harbaugh, one of these fellows.

Q. Did you know Mr. Dean West at that time?

(Testimony of Alexander T. Ellis.)

A. No.

Q. Mr. Henry Rice?

A. No, I don't know as I know Rice.

Q. Mr. John I. Wells? A. No.

Q. Did you know Patrick Downs?

A. I didn't know him when I see him, not till I met him up there.

Q. And the party, of you went up to the Star ranch?

A. Yes, we went up and stayed at the Star ranch that night and the next morning we came out.

Q. And were located the next day?

A. Yes, and that night we came home; we started home late that night.

Q. Did Mr. Downs give you a description of the property you located on?

A. Well, sir, I couldn't tell you whether he give it to me then, but he showed me it, asked me if I wanted to go over it, and it was getting so late I didn't want to.

Q. You didn't go over it?

A. No, sir; it was down like this (indicating), down here.

Q. Did you go over the land at all?

A. Yes, he says "Here is the corner," and he says, "It runs down this way, and up that way (indicating)," and he says, "If you want to go over it you can go over it," and I says "No, I am getting too tired now."

Q. When you got to the Star ranch did you have any talk with Downs?

(Testimony of Alexander T. Ellis.)

A. No, I didn't see him until next morning.

Q. Did you have any agreement about paying him?

A. No, but I knowed I would have to pay \$25.

Q. When did you pay that?

A. I paid it afterwards; he came to the shop and I paid it, as near as I remember.

Q. He took you out to this piece, and said, "This is the piece I am going to locate you on"?

A. Yes, sir, showed me in which direction it was.

Q. And that was the piece you filed?

A. I guess it is; that's all I know about it.

Q. Did you have any talk with Mr. Downs about where you would have your papers prepared, or who would draw your papers?

A. No, not as I can remember.

Q. And then you came back to Boise?

A. Yes, sir.

Q. Did you, and Mr. Coleman, Mr. Faraday, and Mr. Harbaugh all return together?

A. Yes, sir, we all came back in the same rig.

Q. Did you go to Mr. Kinkaid's office after you returned, with Mr. Coleman?

A. Well, sir, I couldn't tell you a thing about whether we went up there or not; the first time I remember Kinkaid to see him was the night we was in line; they pointed him, and I asked who he was; and he was an extra tall man; that was the first time I ever seen Kinkaid to know him.

Q. Do you remember what time you went into line that night?

(Testimony of Alexander T. Ellis.)

A. Oh we went into line about dark.

Q. Do you remember who told you to get into line?

A. Harbaugh come and told me.

Q. That was Sunday night?

A. Yes, sir.

Q. He came to your house and told you?

A. Yes, sir.

Q. And did he go down with you and get in line?

A. He went off, I don't know where he went, and after I got my supper I went.

Q. Was he there?

A. He was there some time during the night in line with the rest of us.

Q. That is Rice J. Harbaugh?

A. Yes.

Q. Do you remember, when you were all in line, somebody telling you to get out of the building?

A. Yes, sir.

Q. Who was that?

A. That was Peter Sonna.

Q. Did anybody tell you not to get out of line?

A. Yes. That was the first time I seen Kinkaid to know him; he said we was to stay there where we were.

Q. Did somebody go out to get him?

A. I couldn't tell you that; he come down the hall, and we was out this way (indicating) from the door.

Q. How do you know where you received this sworn statement, and this non-mineral affidavit, and this notice of publication?

A. I couldn't tell you a thing about that; that has slipped my memory.

Q. Do you know whether they were brought to

(Testimony of Alexander T. Ellis.)

you in line or not?

A. I couldn't tell you a thing about it.

Q. You don't know whether you went to Kindaïd's office to have them prepared?

A. I couldn't tell you a thing about those papers, not even the deed.

Q. And you stayed there until next morning?

A. Yes, sir.

Q. Do you remember who was next to you in line? A. No, I couldn't tell you.

Q. Do you know how many were ahead of you in line?

A. No, I couldn't tell you that; I know there was quite a few.

Q. How many were in line altogether?

A. Oh, gosh, I couldn't tell you.

Q. Ten, or twenty-five, or thirty?

A. I couldn't tell you; quite a few, I know.

Q. Did you get your breakfast in line the next morning?

A. By gosh I don't know; the boys joshed me about that.

Q. You don't know whether you brought your lunch? A. No, sir, I don't know.

Q. Did you stand up all night?

A. No, sir, we sat down.

Q. Have chairs out there?

A. No, I don't believe there was any chairs; I don't remember of any chairs.

Q. Do you remember whether you got away from the land office before noon or after noon that day?

(Testimony of Alexander T. Ellis.)

A. I couldn't tell you that; I know I got away some time during that day, that's all.

Q. Do you remember when you filed your first papers whether you paid some money in the land office?

A. I paid some money in the land office; I paid some money, but that's all I do know.

Q. Was it \$10 or \$100?

A. Well, sir, I couldn't tell you that, to be positive about it; you might think its funny, but I'm telling you just what I can remember.

Q. That's all we want, Mr. Ellis. Now when do you remember meeting Mr. John Kinkaid, after you saw him that time?

A. I met him after that.

Q. How long after that?

A. Oh, I couldn't tell you.

Q. A week?

A. I couldn't tell you how long it would be.

Q. Who introduced you to him?

A. I couldn't tell you that either.

Q. Mr. Coleman?

A. I don't believe I ever was introduced to the man; if I was, I don't remember it.

Q. Did he ever come to your shop after you filed your first papers?

A. After I filed? Let's see; he come in there a couple of times.

Q. Do you know what he came for?

A. He came once, and I think it was him that fetched the money and give it to me and told me to give it to Harbaugh.

(Testimony of Alexander T. Ellis.)

Q. That is this same Rice J. Harbaugh?

A. Yes. If I ain't mistaken I think he was the man; he handed it to me, a roll of bills.

Q. And did you count it? A. No.

Q. Wasn't Harbaugh about the shop at that time?

A. No, he came in at the back door just a few minutes after.

Q. Was Harbaugh working for you at that time?

A. No.

Q. Did you give Mr. Kinkaid a receipt for this money?

A. I couldn't tell you; I don't think I did.

Q. Did Harbaugh give you a receipt for it?

A. I don't think he did; if he did, I don't remember it.

Q. How long was that before Harbaugh made his final proof?

A. I couldn't tell you that either.

Q. Was it the same day?

A. No, it was before that.

Q. How big a roll of bills was it?

A. Oh, quite a size roll.

Q. Did he tell you what to say to Mr. Harbaugh?

A. No; he asked me if I would just please hand that to Mr. Harbaugh, or something of that kind.

Q. Do you remember the occasion of your making final proof? A. When I made final proof?

Q. Yes.

A. Yes, I remember when I made final proof.

Q. Do you remember whether you went to the land office alone or not?

(Testimony of Alexander T. Ellis.)

A. Why no; there was others there with me when I made final proof, yes.

Q. Who were they?

Q. Why Coleman was there, Harbaugh and Faraday; why, there was quite a few around there, I believe.

Q. Did you borrow the money with which you made final proof?

A. Well, sir, I went to the Capital State Bank—I always went there; I was building then—and he refused it to me.

Q. Who did you see there?

A. Neal, the man that's on trial now.

Q. Was that the day you made final proof that you were there?

A. No, I believe it was the day before; I wouldn't be positive about that now.

Q. Then what did you do?

A. I come back to the shop and told Coleman about it, and he said he would go and see if he could get it for me; I thought it was all up.

Q. Did you tell him to go up and see Kinkaid?

A. I don't know just what it was, but he said he thought he could get it, and I believe I told him to go and see if he could get it.

Q. Did you tell him to go and see any person?

A. I don't believe any names was mentioned, but I don't recollect that.

Q. Did he get the money for you?

A. Yes, sir.

Q. How much did he get for you?

(Testimony of Alexander T. Ellis.)

A. I couldn't tell you that.

Q. Was it \$400?

A. I couldn't tell you; he fetched enough money to prove up on the old thing; I didn't need that much, but he fetched the whole bunch.

Q. And you used the money to make final proof?

A. I put it right with what I had, don't you see.

Q. How much did you have?

A. I had a little over \$100 at the time, but as far as that is concerned, he fetched me all the money.

Q. Did you know where he got it from?

A. Not positively; I had an idea.

Q. What was your idea?

A. I had an idea he got it from Kinkaid.

Q. Did he say he got it from Kinkaid?

A. Now I couldn't say about that; he told me about signing a note afterwards, but I don't remember signing that note; if I gave Kinkaid a note for that money, which he says I did, I don't remember it.

Q. Did you ever pay Kinkaid the money?

A. No, I didn't pay him back.

Q. Did you ever pay anybody back?

A. No, I never paid anybody back.

Q. Who did you sell to?

A. As far as the selling part, I went to—or Kinkaid was boarding at the house at the time.

Q. At your house?

A. Yes, at the time I got the last money from him, and I spoke to him two or three different times about it, and he said "Well, I will see what I can do for

(Testimony of Alexander T. Ellis.)

you.”

Q. That was with reference to selling?

A. Yes, sir.

Q. Did he finally see?

A. He seen and fetched me the money.

Q. How much did he bring you?

A. He fetched me \$350 or \$450, I don't remember which.

Q. You signed a deed?

A. Yes, but I don't remember of signing that paper; I have a faint recollection of Hans and another man going to the house to get the Mrs. to sign some paper; that just came to me here about a week ago, and that is all I remember about that.

Mr. KEIGWIN.—Q. Didn't that come to you because you had talked to Mrs. Ellis about it?

A. I didn't talk to her about it, but I just naturally kept thinking about it all the time; that bothered me to know I didn't remember it; but for my part I don't remember ever signing it.

Q. And Kinkaid brought you this \$350 or \$450 to the house? A. Yes.

Q. That was all the money you got out of it?

A. That was what I got out of it.

Q. Was that as much as you expected to get, when you filed?

A. No, I thought we could get a little more.

Q. What made you think that?

A. Well, the general talk around on the streets.

Q. Did you know who Mr. Kinkaid was buying this property for?

(Testimony of Alexander T. Ellis.)

A. Well, sir, no, I didn't, but I know he was doing business for some company.

Q. Didn't know the name of the company?

A. No, if I did then, I don't remember; and I was just simply told or heard.

Q. You have no recollection whatever of ever signing this deed?

A. No, not myself, but I have a faint recollection of Mr. Haines and another man going to the Mrs., and that is all I can get through my head; it may come to me later on, but that is my signature all right.

Q. And do you remember whether, when you put your name to this paper, it was made out, or was it in blank?

A. I don't remember of ever putting my name to it, no, sir; I don't remember of ever seeing it, but that is it all right; that is my name, and I never would sign a blank for no man, no man will get me to sign a blank if I know myself.

Q. Did you know George S. Long?

A. I don't believe I do.

Q. Did you ever hear of him?

A. Well, I wouldn't say whether I did or not.

Q. Did your wife take up a timber claim?

A. No, sir.

Mr. KEIGWIN.—Q. You don't remember hearing of Mr. Long?

A. I wouldn't be positive about it.

Q. But you don't remember now?

A. I don't remember now; you see the matter has slipped me, as far as that is concerned; there is no

(Testimony of Alexander T. Ellis.)

use of me saying positively a thing when I don't quite remember it.

Mr. GORDON.—Q. Do you ever remember being asked to make a deed? A. No.

Q. Do you know how long after you made your final proof that you were first spoken to about selling this property?

A. Oh, it was quite a while after.

Q. Was it two or three days, or two weeks?

A. I couldn't tell you; I believe it was longer than a week, or a month, or a day, or anything like that.

Q. And did I understand you to say that Mr. Kinkaid spoke to you, or did you speak to him?

A. I spoke to Kinkaid first.

Q. And you asked him if he wanted to buy it?

A. I couldn't tell you just what I did say to him, and be right about it, but I spoke to him; but the first time he didn't give me any satisfaction to amount to anything.

Q. Mr. Ellis, you are a Canadian by birth, are you? A. Yes, sir.

Q. Do you remember when you were naturalized?

A. Yes, sir.

Q. When?

A. Not the dates, I don't, but I know I took out my first papers in Dakota, and then I finished up here.

Q. That was how long before you filed on your claim?

A. Oh, it was quite a while; I couldn't tell you; I sent the copies away with it, and they have never

(Testimony of Alexander T. Ellis.)

been returned to me.

Q. Here they are, I guess.

A. Is that them? I have been asked a couple of times about them when I would go to vote here. If they ain't no good to you fellers I would like to have them, for when you come to vote you know they sometimes jerk up on a fellow about those things.

Q. I guess you can arrange to get them some time.

A. All right.

Mr. KEIGWIN.—Get an order from the Commissioner of the Land Office.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Alexander T. Ellis, dated September 14, 1903; the testimony of Alexander T. Ellis, given on final proof, dated December 11, 1903; the cross-examination of Alexander T. Ellis, attached; the non-mineral affidavit of Alexander T. Ellis, dated September 14, 1903, all of which papers have been identified by Alexander T. Ellis as having been signed by him; notice of publication, dated September 14, 1903; the testimony of the other witnesses, given on final proof; and the cross-examination of said witnesses; the register's certificate, and the receiver's receipt, dated December 11, 1903; the deed, dated January 4, 1904, made by Alexander T. Ellis and Josephine Ellis, husband and wife, to George S. Long, consideration \$800, identified by Alexander T. Ellis as having been executed by himself and Josephine, his wife; certified copy of the patent, dated December 1, 1904; and the certificate of recordation attached; all to the north half of the northwest quar-

(Testimony of Alexander T. Ellis.)

ter, and the west half of the northeast quarter of section 22, township 6 north, of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 130A to 130N, inclusive.)

Mr. KEIGWIN.—Q. Mr. Ellis, did you keep a boarding-house or restaurant at the time Mr. Kinkaid ate with you? A. Yes, sir.

Q. Which was it?

A. Well, we had, you might call it, a boarding-house, and you might call it a restaurant, and you might call it a hotel; we had rooms and a dining-room; it went by the name of the Kenmore.

Q. And Mr. Kinkaid used to come into the restaurant to get his meals? A. Yes, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Ellis, at the time you went up to look at the land had you had any talk with Downs?

A. Not before; the first time I seen Downs was the next day after we went up there, in the morning.

Q. Or had you had any talk prior to that time with Mr. Kinkaid?

A. No, sir, I didn't know Kinkaid.

Q. Or Mr. Wells?

A. No, sir, I didn't know Wells, not till after I met him on the street, after the first trial.

Q. Had you had any talk with anyone except talk on the street?

A. General talk was all I had.

Q. After you arrived at the Star ranch and made

(Testimony of Alexander T. Ellis.)

your location and returned here, you waited a few days before the line-up, after you had returned from the Star ranch, you waited several days before the line-up?

A. Before we went up and filed, yes, sir.

Q. Then, as I understand it, some time on Sunday, before you filed, someone telephoned you to get in line.

A. No, Harbaugh came and told me to come up and get in line.

Q. Did Mr. Harbaugh tell you why?

A. I tell you there was some talk about land scrip.

Q. Do you recall that the talk was that Governor Steunenberg represented somebody that was going to scrip it? A. No, there was no name.

Q. Did he tell you that there was a man standing there in line that had located and they thought he represented some scrip men?

A. There was some scrip mixed up in it, but I don't know a thing more about it.

Q. You say you saw Mr. Kinkaid while you were in line there?

A. Yes, that was the first time I seen him to know him.

Q. Did Mr. Kinkaid tell somebody who asked a question, tell them to stay in line, or did he go up and down the line without—

A. Sonna—there was a little confusion there somehow, I couldn't tell you just how it was; somebody made some objection, the janitor or somebody,

(Testimony of Alexander T. Ellis.)

then Sonna came up and he ordered us all out, and we wouldn't go, and in a few minutes—I couldn't tell you just how long it was, but after that Kinkaid came along, and somebody spoke to him that knew him, and he told him to stay in line, and I asked the boys who he was, and they told me it was Kinkaid, and I says, "What did he say?" and he says to "stay in line, that Sonna can't put you out of the house."

Q. You did stay in line until the next morning, till you filed?

A. Yes, sir, we stayed in line till our turn came.

Q. Up to the time your turn came and you filed your first papers, Mr. Ellis, up to that time, had you made any agreement, in writing or oral, express or implied, with any person, firm, or corporation, by which you had agreed to turn over to such person, firm, or corporation, or to any person they should direct, the title to the land which you might acquire from the United States?

A. No, sir, I never made no agreement with no man.

Q. Had you made any such agreement as that at the time you made your final proof?

A. No, sir, I had not.

Q. Did you, at any time, up to the time you actually sold this property, enter into any kind of agreement, express or implied, with any person, firm, or corporation, by which any person, firm, or corporation had acquired any interest in or lien upon the land you were acquiring from the United States?

(Testimony of Alexander T. Ellis.)

A. No, sir, I never made no agreement with no man.

Q. At the time you made the loan with which to prove up on this land, or got the money from Mr. Kinkaid, was anything said by Mr. Kinkaid or you, or any other person, with reference to such loan or advance having anything whatever to do with what you should do with the land?

A. No, sir, there was no talk of that at all; that talk wasn't put up to me.

Q. Now at the time you filed on this land, Mr. Ellis, you were a man of some means, were you not?

A. Well, I had a little, and I had a blacksmith shop and owned a creamery building.

Q. And I believe were building some brick buildings.

A. Yes, that was the summer I tore the shop out and put up the Kenmore house.

Q. And at the time you filed on this land, your first papers, had you any doubt of your ability to get sufficient funds to pay the Government?

A. No; I went up to the bank just the same as I always did; any time I wanted money I always went to Neal and got it.

Q. At the time you filed that was the way you expected to get it?

A. I never thought about it at all; whenever I was short I would go up there and he would accommodate me.

Q. Prior to that had you been accommodated with \$400 at various times?

(Testimony of Alexander T. Ellis.)

A. No, I had been accommodated with more than that from the bank, but on that occasion he explained that, and he said sometimes there was trouble and he didn't want to mix up in it whatever.

Q. Then having failed to get the money from the bank, where you usually got it, you intended, as I understand it, to drop the matter.

A. I went down and says, "Billy, it's all off."

Q. Billy Coleman you mean?

A. Yes, sir. And he said he believed he could get the money for me.

Q. And he did go and get the money?

A. I couldn't tell you the words, but he went and got it for me.

Q. Is your recollection very clear on these things, Mr. Ellis?

A. Well, no; there is lots of things I have forgotten, don't know a thing about it; they was joshing me last night about that lunch, and I don't remember giving Kinkaid that note, which they said I did.

Q. Let me see if I can refresh your recollection. Do you recall that you at one time told Mr. Kinkaid, a short time before the time for final proof came, that as far as you were concerned you could get the money all right, but you was afraid the boys—meaning Coleman and Harbaugh—would be disappointed in getting theirs?

A. Harbaugh had money of his own; no, I never said any such thing.

Q. And do you remember when you gave the note, that you gave it not only for your own, but for

(Testimony of Alexander T. Ellis.)

one other claim, to Kinkaid?

A. I don't know; they joshed me about when Coleman give me the money that I give Kinkaid a note; I don't remember anything about that note.

Q. You wouldn't say you didn't, would you, Mr.—

A. No, I wouldn't say I didn't, because I don't remember anything about it.

Q. It was your understanding in any event that at the time you sold and were paid, whatever it was, that the amount which had been loaned to you before was taken out?

A. Yes, but it was the third time I spoke to Kinkaid before I got the money.

Q. You don't understand me. When you did finally get the money, you understood, did you not, that the money which was advanced to you had been repaid?

A. Yes, sir.

Q. Do you remember that Mr. Kinkaid destroyed the note?

A. No, sir, I couldn't tell you and be right about it, because I don't remember of ever giving him a note; I don't remember of ever seeing one.

Q. You understood that Mr. Kinkaid was acting as a broker in selling the land for you?

A. I don't know about the broker business, or anything like that, but then I understood that he was doing business for some company.

Q. Did you understand that he was selling it for you; did he charge you a commission for the sale?

A. Not as I understood.

Q. You don't know that he was acting for any

(Testimony of Alexander T. Ellis.)

company from anything he told you, do you?

A. He was doing business for some company, but as far as me paying him a fee, I don't know anything about that.

Q. You don't know that he was acting for a company?

A. No, I couldn't swear to that; I don't remember.

Q. You don't know whether he was buying this for himself and selling it again?

A. I don't know; I couldn't tell you and be right.

Q. In any event you entered this land for your own benefit and for the benefit of yourself alone?

A. Yes, for my benefit and for the benefit of my family.

Q. And never at any time had you entered into any agreement whatever? A. No, sir.

Q. And any loan you made was not with the understanding that you would sell the land to anyone?

A. No, there was no agreement made between me and anybody else about that.

Q. Was there any implied agreement of that kind or of any kind?

A. No, sir, there was nothing like that.

Q. You could have sold it to anybody that would pay you more than Mr. Kinkaid?

A. No, I wasn't tied up with nobody, as far as that is concerned.

(Witness excused.)

At this time court adjourned until two o'clock, Friday, February 26, 1909.

The taking of testimony was resumed at two o'clock P. M., Friday, February 26, 1909, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Joseph Penrod, on Behalf of the Complainant.]

JOSEPH PENROD, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Joseph Penrod, is it, sir?

A. Yes, sir.

Q. Where do you reside, Mr. Penrod?

A. Boise, Idaho.

Q. How long have you resided at Boise?

A. Since a year ago last August.

Q. What is your occupation?

A. Transfer business at present.

Q. How long have you been in that business?

A. Since I came to Boise, a year ago this last August.

Q. Where did you reside in September, 1903?

A. Idaho City.

Q. What was your occupation then?

A. I was in the mining business then, owned a quartz mine.

Q. You took up a claim under the Timber and Stone Act in September, 1903, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn state-

(Testimony of Joseph Penrod.)

ment, dated September 14, 1903, of Joseph Penrod, and ask you if that is your signature to that paper.

Q. Yes, sir, that is.

Q. I show you the non-mineral affidavit of Joseph Penrod, of the same date. Is that your signature to that?

A. Yes, sir.

Q. I show you testimony of Joseph Penrod given on final proof, December 17, 1903, and ask you if that is your signature.

A. Yes, sir.

Q. And the cross-examination of Joseph Penrod? Is that your signature?

A. Yes, sir.

Q. I show you deed, dated March 28, 1904, made by Joseph Penrod and Mary Penrod, his wife, to George S. Long, and ask you if that is your signature.

A. Yes, sir, that is my signature.

Q. Is that the signature of your wife?

A. Yes, sir.

Q. And you both acknowledged that before H. L. Fisher?

A. Yes, sir.

Q. Mr. Penrod, how far from where you lived was this claim that you located on?

A. You mean from Idaho City?

Q. Yes.

A. I couldn't tell you across the country how far it would be; I could tell you about the distance the way we went.

Q. Well, did you go to the Star ranch?

A. Went to the Star ranch from Idaho City.

Q. And how far is that?

A. From the Star ranch to the claim?

Q. To Idaho City.

(Testimony of Joseph Penrod.)

A. I think it is in the neighborhood of eight or nine mile, maybe more, I don't know.

Q. And then was your claim farther on, beyond the Star ranch?

A. It was in south of the Star ranch.

Q. It wasn't between Idaho City and the Star ranch?

A. No, sir.

Q. How far from the Star ranch was the claim?

A. I should judge between four and a half and five miles, something like that.

Q. Did you go to the Star ranch to take up this claim alone, or did you go with some one?

A. I went with Mr. W. R. Reeves.

Q. And what is his business?

A. He is in the transfer business, a partner of mine at present.

Q. Did he live in Idaho City at that time?

A. I can't say whether he lived there or whether he was down at Grimes Creek, but he was in Idaho City at this time.

Q. Who first told you of these timber claims?

A. Well, Mr. H. L. Fisher notified me.

Q. And was Mr. Fisher a lawyer?

A. Yes, sir.

Q. Did he have his office at Boise?

A. No, sir.

Q. Where was his office?

A. Idaho City.

Q. When did he notify you?

A. Well, it was just a day or so before the time that we took the land up.

Q. What did he say to you ?

(Testimony of Joseph Penrod.)

A. Well, he told me—he called me up on the telephone and he said, “There is a crowd going out from Boise up there to this land in by the Star ranch,” and he said, “Go over there and meet the cruiser, and if there is any extra claims the chances are that you can get one, you and Mr. Reeves.”

Q. And you had talked to him before about this?

A. No, sir.

Q. And do you know how he happened to call you up? A. He knew that I wanted a claim.

Q. And what day of the week did you go, do you remember?

A. I think it was Friday, if I am not mistaken.

Q. And were you located on Friday?

A. No, sir.

Q. When were you located? A. Saturday.

Q. Saturday morning?

A. No, we went out in the morning, and during the day we went over the ground.

Q. And you met Mr. Downs up there, did you?

A. I did, yes, sir.

Q. Was that the first time you had met Mr. Patrick Downs?

A. That was the first time I ever talked to the man, yes, sir.

Q. Did you ask him if you could get a claim?

A. I think Mr. Reeves done the talking, he asked him; I was present.

Q. What did he say?

A. He said he could fill us out.

Q. And how many other people were there at

(Testimony of Joseph Penrod.)

that time that you knew?

A. I don't know; I didn't know any outside of Mr. Reeves and a man by the name of Martin.

Q. What Martin?

A. A man by the name of Tom Martin.

Q. Was he a lawyer too?

A. I don't think so, at the time, no, sir.

Q. Was he a partner of Frank Martin, the ex-attorney general? A. He is now, yes, sir.

Q. A nephew of Frank Martin?

A. Yes, sir.

Q. And Mr. Downs took you out and located you on a claim? A. Yes, sir.

Q. Did he just take you two people alone?

A. No, there was three or four others with us.

Q. Did he show you a claim and say "This is the one I locate you on"? A. Yes.

Q. Did he give you a description of it?

A. He did that night at the Star ranch.

Q. Did you pay him then? A. No, sir.

Q. When did you pay him?

A. Paid him after I filed.

Q. Did he tell you where to go to have your papers made out? A. No, sir.

Q. Who made out your papers for you?

A. Frank Martin.

Q. Had you had business with Mr. Frank Martin before that? A. No, sir.

Q. How did you happen to go to his office?

A. I asked this young Martin if he would get me a set of papers; I know I couldn't get down here

(Testimony of Joseph Penrod.)

before Sunday, and I wanted to get a set of papers and fill them out and have them ready for Monday morning.

Q. You came down Sunday, did you?

A. Yes, sir.

Q. What time did you get to Boise Sunday?

A. It was in the evening, four or five o'clock.

Q. Did you go to the land office that evening?

A. Yes, sir.

Q. What time did you go to the land office?

A. Well, it was after I got my supper.

Q. Did you go alone, or did someone go with you?

A. I went alone.

Q. And you got into line? A. I did.

Q. How many people were ahead of you?

A. Oh, a dozen or twenty.

Q. Were your papers brought to you while you were in line? A. They were.

Q. Who brought them to you?

A. Frank Martin.

Q. And did you pay him for his services?

A. I did.

Q. How much did you pay him?

A. \$2.50; I didn't pay him that day, though.

Q. Do you remember who stood immediately in front of you in line? A. No, I don't.

Q. Who stood behind you?

A. A man by the name of Ellis; he was on one side or the other, I couldn't say which.

Q. Was he the man that testified this morning?

A. Yes, sir.

(Testimony of Joseph Penrod.)

Q. Did you know that you were going to get into line before you left Idaho City? A. No, sir.

Q. Who told you to get into line Sunday night?

A. I came along there and saw a crowd and someone said, "They are lining up," and I followed right in.

Q. Did Mr. Martin bring up your papers to you?

A. No, sir, young Mr. Martin was there, and he said "Your papers are up to the office," and I asked him if the papers was there, and he said "You can fill them out."

Q. Was his office in the same building?

A. Yes, sir, the same building.

Q. And the papers that Mr. Martin prepared for you were the sworn statement that I have shown you? A. I think so.

Q. And the non-mineral affidavit and the notice of publication, all of the first papers that you filed?

A. He is the man that filled out all of my first papers, yes.

Q. Do you remember talking to him about who you would have for your witnesses?

A. No, sir.

Q. He put the witnesses in himself, did he?

A. I don't know; I couldn't say that now; I couldn't tell you whether he done that there, or up in the land office when I filed, I couldn't say that.

Q. Did you know anything about the State making its selection about that time?

A. No, nothing more than just what I had heard, general talk; I didn't have it from anybody.

(Testimony of Joseph Penrod.)

Q. You didn't know whether the State had made its selection in that locality when you went up there or not? A. No, sir.

Q. You learned that afterwards?

A. Yes, sir.

Q. Were you notified when the time came for you to make your final proof? A. Yes, sir.

Q. Do you remember that occasion?

A. Well, I got a notice from the land office, I think.

Q. And do you remember who went to the land office with you?

A. Mr. Reeves and a man by the name of Campbell, I think, was his name.

Q. Do you remember how much money you paid in the land office when you made your final proof?

A. Yes, sir.

Q. How much? A. \$412.50 I think.

Q. Did you pay that in check or cash?

A. Cash.

Q. Did you draw the money out of the bank before you came down here? A. Yes, sir.

Q. It was your own money, was it?

A. Yes, sir.

Q. You didn't borrow it? A. No, sir.

Q. Do you know how long you had had that much money in the bank?

A. I have had that much and more, a good many times more than that.

Q. You had it in the Idaho City bank, did you?

A. Yes, sir.

(Testimony of Joseph Penrod.)

Q. Now, at this time did you know of anybody that was buying timber claims?

A. No, sir, I did not.

Q. Did you know of anyone that was selling timber claims? A. No, sir, I didn't.

Q. You didn't know of any market?

A. No, sir.

Q. Did you know of a prospective market?

A. No, I did not.

Q. Had you ever met Mr. John Kinkaid at that time? A. Yes, sir.

Q. Had you ever talked to him about taking up a timber claim? A. No, sir, I didn't.

Q. You had known him before?

A. I knew him up at Idaho City when he was mining up there.

Q. How long after you made your final proof did you sell this land?

A. Well, the following spring some time.

Q. Do you know to whom you sold?

A. I think the deed there states to George S. Long, I think.

Q. Well, you didn't know Mr. Long, did you?

A. No, sir.

Q. Well, did Mr. Kinkaid buy this for Mr. Long?

A. I know nothing about it, sir.

Q. To whom did you sell?

A. I sold to Long.

Q. Did you ever see Mr. Long?

A. No, sir.

Q. Through whom did you sell to Mr. Long?

(Testimony of Joseph Penrod.)

A. Through Mr. Fisher.

Q. What Mr. Fisher? A. H. L. Fisher.

Q. Do you know what relation Mr. Fisher is to Mr. Martin?

A. Brother in law by marriage, I think; wasn't at that time.

Q. Mr. Fisher married Mr. Tom Martin's sister?

A. No, their wives are sisters.

Q. And how did you happen to have Mr. Fisher sell this for you?

A. He and I were partners in quartz claims.

Q. Is Mr. Fisher here now?

A. I don't think so; I think he is in Chicago.

Q. Do you know when he is going to return?

A. No, I don't know.

Q. Do you know who prepared this deed for you?

A. No, sir, I don't know who prepared it.

Q. And did you just turn it over to Mr. Fisher to sell for you, or did you fix an amount that you would take for it?

A. No, I had no amount fixed; he told me he could get \$1000 for it.

Q. And he came to you then about selling it, did he? A. Well, we talked about it, yes.

Q. Did you get \$1000 for it? A. Yes, sir.

Q. Did he pay you in cash or check?

A. Yes, sir, part cash, yes, sir; well, he paid it all, you might say, cash; he loaned half of that money for me after he got it for me, here in Boise, and paid me the cash for the balance, so it was all cash, you might say.

(Testimony of Joseph Penrod.)

Q. Do you know whether or not he had the dealings with Mr. Long, or with some agent of Mr. Long's here?

A. I know nothing about that.

Q. Never asked him? A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Joseph Penrod, dated September 14, 1903; non-mineral affidavit of Joseph Penrod, of the same date; testimony of Joseph Penrod, given on final proof, dated December 17, 1903; the cross-examination of Joseph Penrod, attached, all of which papers have been identified by Joseph Penrod as having been signed by him; the testimony of the other witnesses on final proof, and their cross-examination; the receiver's receipt and the register's certificate, dated December 17, 1903; certified copy of the patent, dated December 1, 1904; the notice of publication, dated September 14, 1903; the deed, made by Joseph Penrod and Mary, his wife, to George S. Long, consideration \$1000, which has been identified by Joseph Penrod as having been executed by himself and wife, dated March 28, 1904; all to the northeast quarter of section 29, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 131A to 131N, inclusive.)

Q. Where did you sign this deed?

A. In Idaho City.

Q. You signed it in Idaho City?

A. Yes, sir.

Q. And after you signed it why Mr. Fisher later

(Testimony of Joseph Penrod.)

brought the money up there and gave it to you?

A. Yes, sir.

Q. Do you know how long after you signed the deed was it that you got the money?

A. It wasn't but the first trip down; when he came back he settled with me.

Cross-examination.

(By Mr. BUNDY.)

Q. The Mr. Fisher that negotiated the sale was not the Mr. Fisher that telephoned to you, was he?

A. Yes, the same man.

Q. H. L. Fisher? A. Yes.

Q. Did you hear some talk in the line-up as to what the purpose of that was, why it was necessary to line up and be on hand Monday morning?

A. I think there was some talk that they were going to scrip it, or something of that kind, somebody.

Q. Did you hear who it was?

A. No, I didn't.

Q. Now, I will ask you the usual questions, Mr. Penrod. At the time you filed on this land, or at the time you made final proof, was there in existence any agreement of any kind or character, written or oral, express or implied, between you and any person, firm, or corporation, by which you had undertaken and agreed to turn over to them or transfer to them, or to such person as they should direct, the title which you might acquire from the United States? A. No, sir, there was nothing.

Q. Was there ever at any time any such agreement? A. No, sir.

(Testimony of Joseph Penrod.)

Q. It is charged in this complaint, Mr. Penrod, that you made this entry for the benefit of the Barber Lumber Company and the other defendants, and at their request. Is that true or false?

A. That is false.

Q. And it is further alleged that you, together with many others, went to the land office, and at the solicitation and request of the Barber Lumber Company and the other defendants testified falsely, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that true or false?

A. That is false.

(Witness excused.)

[Testimony of Wilbert R. Reeves, on Behalf of the Complainant.]

WILBERT R. REEVES, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Wilbert R. Reeves?

A. Yes, sir.

Q. What is your occupation, Mr. Reeves?

A. I am in the transfer and cigar business.

Q. What was your occupation in 1903?

A. Well, I was ranching part of that year.

A. Where did you reside?

A. Grimes creek, Boise County.

Q. You took up a claim under the Timber and Stone Act in 1903, did you?

(Testimony of Wilbert R. Reeves.)

A. Yes, I think that was the year.

Q. I show you timber and stone land sworn statement of Wilbert R. Reeves, dated September 14, 1903, and ask you if you signed that paper.

A. Yes, sir, that is my signature.

Q. I show you non-mineral affidavit of the same date, of Wilbert R. Reeves, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. I show you the testimony of Wilbert R. Reeves, given on final proof, December 17, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. And the cross-examination of Wilbert R. Reeves on the same occasion. Is that your signature?

A. Yes, sir.

Q. I show you deed, dated February 29, 1904, made by Wilbert R. Reeves and Maud Reeves to George S. Long, and ask you if you signed that paper?

A. Yes, sir.

Q. Is that the signature of your wife also?

A. Yes, sir.

Q. And you acknowledged that deed before John M. Haines, both of you?

A. Yes, sir.

Q. Did you say you were living in Boise City in 1903?

A. I moved down here that fall.

Q. Were you here at the time you took up a claim?

A. No, sir.

Q. How far from Boise City were you living?

A. I was in Boise part of that summer. I sold a ranch up there on Grimes creek in the spring of 1903, and I helped to bring down a drive of wood from there, and was down here part of that summer; then

(Testimony of Wilbert R. Reeves.)

I was back up there in the fall looking after my cattle, and was at Idaho City at the time I went over to take up this claim.

Q. Had you had any talk with anyone about taking this claim before you went to Idaho City?

A. Not that I remember of.

Q. Did you know John Kinkaid at that time?

A. Yes, sir.

Q. Had you ever talked to him about it?

A. No, sir.

Q. Can you remember anyone that you talked with?

A. No one in particular; it was general knowledge that they were taking them; I knew that.

Q. Can you call to mind now any single person you talked with about taking up a timber claim?

A. No, I cannot, in particular.

Q. Were you visiting in Idaho City at this time?

A. Yes, sir.

Q. Who were you visiting?

A. My brother, and I had a sister living there too.

Q. What was your sister's name?

A. Reardon.

Q. Now, when did you go to locate on this claim?

A. The date?

Q. Yes, as near as you can remember; the day of the week also.

A. I believe it was on a Thursday. What is the date of those papers there, the first one?

Q. September 14th. Was this the Thursday before the Monday, the 14th?

(Testimony of Wilbert R. Reeves.)

A. It was the Thursday before the day we filed on the claim.

Q. And who went with you?

A. Joe Penrod.

Q. And did you know Mr. Penrod before then?

A. Yes, sir.

Q. And who arranged for you to go?

A. Mr. Penrod came to me while I was there in Idaho City one day and said that Harry Fisher had telephoned up from Boise that they were locating that timber over there near the Star ranch, and he thought we could get a claim if we wanted to go over, and I was acquainted with Mr. Downs, and I said, "Well, we will go over anyway and try to get in on it."

Q. And you went over to see Mr. Downs?

A. Yes.

Q. Had you ever talked to him about taking up a timber claim before that occasion?

A. No, I never did.

Q. Did you find out what it would cost you to take up a claim at that time?

A. Well, I don't know as I did; I knew before what he charged for locating; I had heard others speak of it.

Q. And you went over to see Mr. Downs?

A. Yes, sir.

Q. And did he locate you the day you got there or the next day?

A. The next day; we stayed all night there.

Q. Do you remember the day of the week you ar-

(Testimony of Wilbert R. Reeves.)

rived there; was that Thursday?

A. I think we went over on Thursday evening and stayed all night, and went out and looked at the timber the next day, and went back to Idaho City the same day; I may be mistaken about it being Thursday; it might have been Friday.

Q. Now, see if you can remember. If you got there Thursday and went over the land Friday, did you go back to Idaho City that day?

A. Went back the same day we looked over the land.

Q. What day of the week did you come to Boise?

A. Came to Boise on Sunday; I am sure of that. It might have been Friday evening that we went from Idaho City to the Star ranch; I won't be positive about that, though.

Q. What time of the day were you located, do you remember?

A. We started out from there early in the morning.

Q. And how far was the claim from the Star ranch?

A. Well, I should judge five or six miles.

Q. Did you walk or ride? A. We rode.

Q. Then did you go back to the Star ranch before you returned to Idaho City? A. Yes, sir.

Q. And did you get back to the Star ranch in time for dinner?

A. I don't remember about that.

Q. What is your best recollection of the time?

A. I think we had something to eat there; I don't

(Testimony of Wilbert R. Reeves.)

know what time we got back, but I think we had something to eat before we went home.

Q. Do you remember what time you left for Idaho City? A. I do not.

Q. Do you remember what time you arrived at Idaho City? A. I think it was near dark.

Q. And do you know whether that was Friday or Saturday? A. That I went to Idaho City?

Q. That you returned to Idaho City?

A. I don't remember, but I think it was Saturday, because I don't think I laid over there after I got back; I think the next morning we came to Boise.

Q. What time did you get to Boise?

A. We got down here in the evening.

Q. What time?

A. I don't remember the exact time, but it was near night.

Q. Did you and Mr. Penrod come together?

A. Yes, sir.

Q. And did Mr. Downs tell you where you could get your papers made out?

A. I don't think he did.

Q. And who made out your filing papers?

A. I believe it was John Kinkaid.

Q. And did you go to John Kinkaid's office as soon as you got to Boise that Sunday afternoon?

A. I don't think I did.

Q. Was Mr. Penrod with you when you went to Kinkaid's office?

A. I don't think I went to Kinkaid's office that evening.

(Testimony of Wilbert R. Reeves.)

Q. Well, did you go into line that night?

A. Yes, lined up at the land office there shortly after dark, I think.

Q. Well, was it unusual for you to go to the land office on Sunday night? Did you think there was anything unusual about it?

A. Well, it might have been a little unusual.

Q. Who told you to go to the land office Sunday night?

A. I don't know who did tell us; someone said they was going to scrip all that timber.

Q. Did you hear that before you came down from Idaho City?

A. No, I never heard it till I got down here.

Q. Do you remember who told you that?

A. I do not, but I think it was some of the people that were up there at the time.

Q. Was it Mr. Thomas Martin?

A. I can't remember who it was now.

Q. Did you and Mr. Penrod go to the land office together? A. That night?

Q. Yes.

A. I don't remember that, but I believe we did.

Q. Were you with him when you were told that you had better go to the land office and get in line?

A. I don't remember.

Q. Now you say you went into line shortly after dark? A. Yes, I think it was.

Q. Do you remember who stood next to you in the line?

A. That's why I think Penrod went with me, be-

(Testimony of Wilbert R. Reeves.)

cause I believe we were together in the line, but I won't say for sure.

Q. And were your papers brought to you while you were standing in line?

A. I think they were; they must have been, because I don't believe I was at Kinkaid's office, and he made out the papers, but I don't know who brought them.

Q. Did you pay Kinkaid for making them out?

A. No.

Q. Do you know where Kinkaid got the numbers from that he made out the description in these papers?

A. I suppose from Mr. Downs, but I don't know; I had the numbers.

Q. You hadn't communicated the numbers to Kinkaid, had you?

A. Myself?

Q. Yes.

A. I don't believe I did; I don't know.

Q. Did you see Mr. Sonna, the owner of the building, there that night?

A. Yes, he tried to run us out.

Q. Did anybody come and tell you not to get out?

A. There was a lawyer here in town had some fellows there to file on some timber, and he was kind of looking after them; they were in head of us; and he told us not to go, they had no right to put us out.

Q. Did Mr. Kinkaid tell you that?

A. No, sir, I don't think so.

Q. Did you see Mr. Kinkaid there?

A. Not as I remember.

(Testimony of Wilbert R. Reeves.)

Q. Did you know Mr. Alexander T. Ellis?

A. Yes, sir.

Q. Did you see him in line?

A. I don't know whether he was there or not.

Q. Now do you know how Kinkaid happened to prepare these papers for you?

A. No, I do not.

Q. You didn't ask him to, did you?

A. I don't believe I did; I don't remember.

Q. And do you know who brought them to you?

A. I do not.

Q. Do you remember the time of night that they were brought to you?

A. I do not; I knew I had to have them.

Q. What is your best recollection as to who brought them to you?

A. Well, I don't remember; I wouldn't say who did do it.

Q. Did you talk to Mr. Thomas Martin that evening?

A. Probably I did, but I believe Tom was in the line there; I was acquainted with him; I suppose I did.

Q. Then you went to the land office and you filed your papers in the land office the following morning?

A. Yes, sir.

Q. Do you remember what time you filed them?

A. Well, the land office opened at nine o'clock, and to the best of my recollection I was down the line ten or twelve; I don't know how long it did take for the others to get out of the road.

(Testimony of Wilbert R. Reeves.)

Q. I mean, was it ten o'clock, or was it twelve o'clock?

A. I don't think it was twelve; somewhere between nine and twelve.

Q. Do you know how much money you paid at the land office that day?

A. I do not; I don't know whether I paid any that day or not.

Q. Do you remember the occasion of your making your final proof? A. Yes, sir.

Q. Now at that time did you know of anybody that was purchasing timber claims?

A. I did not; it was general knowledge that timber claims were being sold; that's all I know.

Q. Do you know who they were selling them to?

A. I do not.

Q. Did you know who they were selling them through, who was the agent who was buying them?

A. Well, I can't say that I did even know that.

Q. Can you think of anyone who had told you they had sold a timber claim?

A. No, I can't name anyone now.

Q. Don't know of anyone that told you they had sold their timber claim?

A. No, sir, not now, I don't remember.

Q. And at that time you had no idea of any market for it?

A. Well, it was general knowledge that they were being bought. I might have heard several speak of selling their claims, but at the present time I don't remember who they were.

(Testimony of Wilbert R. Reeves.)

Q. You had never heard that Mr. Kinkaid was buying timber claims, had you?

A. I probably had.

Q. Had you ever talked to him about buying timber claims? A. No, I don't think I had.

Q. Do you remember how much money you paid in the land office when you made your final proof?

A. Four hundred and some dollars, I think probable \$12.50, or something.

Q. Did you pay that by check?

A. I don't think so; I don't think they would take a check.

Q. Well, did you bring your money down with you, or did you have it here in Boise?

A. I was living here; I had the money here.

Q. Was that money that you got from the sale of your farm? A. Yes, sir.

Q. How much did you get for your farm, do you remember? \$4500.

Q. And you had that in the bank at that time?

A. Well, I had some in bank and some still coming; that wasn't all the money I had anyway.

Q. And you didn't borrow any money to make your final proof with? A. No, sir.

Q. Now how long after you made your final proof did you start negotiations for the sale of this land?

A. After?

Q. Yes.

A. I couldn't say as to the time. Kinkaid met me on the street one day and told me any time I was ready to sell he would like to buy it.

(Testimony of Wilbert R. Reeves.)

Q. Did he tell you what he would give you for it?

A. I believe I asked him what he was paying, and I think he said \$750 or \$800, I don't know.

Q. And did you sell to him that day?

A. No, sir.

Q. How long after that did you sell?

A. I can't remember. Well, it was shortly after I had proved up that he spoke to me about buying it, and I didn't sell, I guess, for a couple of months after, I don't know.

Q. Well, did he come to you again?

A. To the best of my recollection, I think he spoke to me two or three times about it.

Q. Did he raise the price any, or the bid?

A. Yes, I wouldn't sell for what he offered first.

Q. How much did he finally offer you?

A. \$1,000 was what I asked.

Q. What did you get?

A. That is what I got.

Q. \$1,000?

A. Yes; I don't know as he ever offered me that, but that was what I wanted, and that is what I got.

Q. And did he give you \$1,000?

A. Yes, sir.

Q. And you signed the deed that day?

A. Yes, sir.

Q. Did he give you the money in cash?

A. He gave me a check on the First National Bank.

Q. And did you read this deed that you signed?

A. I don't know as I read all of it.

(Testimony of Wilbert R. Reeves.)

Q. Did he have the deed prepared when you went to the office, or did he prepare it after you went there? A. He had it prepared, I think.

Q. And you went in and signed the deed and he gave you the money?

A. I went in and took the deed down to Haines' office and signed it; his office was over the real estate office, where Haines was.

Q. And you left the deed with Kinkaid?

A. Yes, I think I took it back up to his office.

Q. Or did you take it to the bank?

A. No, I took it back to Kinkaid.

Q. And your wife was with you at that time?

A. She was with me when we signed the deed.

Q. Did you notice that the consideration in this deed was \$900?

A. I know that is what was put in.

Q. Did you know George S. Long?

A. No, sir.

Q. You knew that he was the grantee in this deed? A. I knew that he was in the deed, yes.

Q. You didn't care who was getting it just so you got your money?

A. The \$1,000 was all I wanted.

Q. Did you get that check of Kinkaid's cashed, or did you deposit it to your credit in the bank?

A. I had a credit there, I think I had it deposited to my credit.

Q. Your wife didn't take up a timber claim, did she? A. Yes.

Q. The same time you did? A. No.

(Testimony of Wilbert R. Reeves.)

Q. Before or after?

A. Quite a while after.

Q. Has she sold hers? A. Yes, sir.

Q. Do you know to whom she sold it?

A. I do not; I know the man that paid the money, but I don't know who—

Q. Who was the man that paid the money?

A. Gus Harvey.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement, dated September 14, 1903; the non-mineral affidavit, of the same date, signed by Wilbert R. Reeves; the testimony of Wilbert R. Reeves, given on final proof, dated December 17, 1903; cross-examination attached, all of which have been identified by Wilbert R. Reeves, as having been signed by him; the notice of publication, dated September 14, 1903; the testimony of the other witnesses, given on final proof, and the cross-examination of them; the receiver's receipt, and the register's certificate, dated December 17, 1903; the deed, dated February 29, 1904, made by Wilbert R. Reeves and Maud Reeves, husband and wife, to George S. Long, consideration \$900, which has been identified by Wilbert R. Reeves as having been signed by himself and Maud Reeves, his wife, and acknowledged before John M. Haines; certified copy of the patent, dated December 1, 1904; all to the northwest quarter of section 29, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 132A to 132O, inclusive.)

(Testimony of Wilbert R. Reeves.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Reeves, you had your first papers all ready, when you finally got up to the window, for filing?

A. Yes, sir.

Q. And they were made out by Kinkaid?

A. I think so.

Q. Well, did Mr. Downs give you the numbers, or did he give them to the party?

A. Mr. Downs gave us the numbers up there.

Q. And you now can't say whether you sent that or took that to Mr. Kinkaid or not?

A. I have forgotten.

Q. You don't mean to say that you don't know anything about Mr. Kinkaid getting the information through anyone but you, do you?

A. No, I don't say, but I have forgotten; I don't know whether I went to Kinkaid's office that night or not.

Q. You may have done so?

A. I might; I wouldn't say.

Q. Mr. Reeves, at the time you filed on this land, or at the time you made final proof, had you entered into any agreement, written or oral, express or implied, with any person, firm, or corporation, by which you had agreed to turn over, transfer, or assign any right, title, or interest in and to the land you were about to acquire from the United States of America?

A. No, sir.

Q. Did you make such an agreement at any time?

A. No, sir.

(Testimony of Wilbert R. Reeves.)

Q. Did you enter this land for the benefit of, or at the request of, or at the suggestion of, any person other than yourself? A. No, sir.

Q. Did any person, at any time, or any firm, or corporation, have any interest in or lien upon the land you acquired from the United States?

A. No, sir.

Q. It is charged in this complaint, Mr. Reeves, that you entered this land at the request of and for the benefit of the Barber Lumber Company, John Kinkaid, A. E. Palmer, Horace S. Rand, L. M. Pritchard and the other defendants. Is that true or false? A. It is false.

Q. And it is charged that you entered into an agreement with these defendants whereby you undertook and agreed to enter this land and then go to the land office and testify to what you knew to be false, at their suggestion and at their request, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that true or false? A. It is false.

(Witness excused.)

[Testimony of Cleora M. Wickersham, on Behalf of the Complainant.]

CLEORA M. WICKERSHAM, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Cleora M. Wickersham?

(Testimony of Cleora M. Wickersham.)

A. Yes.

Q. What is your husband's name, Mrs. Wickersham?

A. Well, it is Ainslie M. Wickersham.

Q. And were you named Snow before you were named Wickersham?

A. I guess I was, yes, sir.

Q. Is Snow your maiden name?

A. No, sir.

Q. What was your maiden name?

A. Martin.

Q. Are you any relation to Mr. Thomas Martin?

A. No.

Q. Are you any relation to Mr. Frank Martin?

A. Well, one Frank Martin.

Q. Which Mr. Frank Martin?

A. Frank R. Martin.

Q. You are no relation to Mr. Frank Martin, the ex-attorney general?

A. No.

Q. You took up a claim under the Timber and Stone Act in 1903, did you?

A. I think that is the date, somewhere near there.

Q. And where were you living at that time?

A. Here in Boise.

Q. And how long have you lived in Boise?

A. About six years, I believe.

Q. How long had you lived in Boise when you took up a timber claim?

A. Well, something like a year and a half or two years, I think.

Q. You had no employment when you took up a

(Testimony of Cleora M. Wickersham.)

timber claim, did you? A. No, sir.

Q. Were you a widow then? A. Yes.

Q. How long had you been a widow in 1903?

Mr. BUNDY.—What has that got to do with a timber claim?

Mr. GORDON.—Answer the question.

A. Well, what do you mean by this?

Q. I want to know how long Mr. Snow had been dead. A. Mr. Snow isn't dead.

Q. Oh! Who first spoke with you about taking up a timber claim?

A. I don't just remember; I suppose my father or brother, or somebody.

Q. What is your father's name?

A. Martin, William H.

Q. And Mr. Wheeler Martin is your brother?

A. Yes.

Q. And when did you go up to take up this timber claim? A. You mean the time of the year?

Q. Yes.

A. Well, it was cold weather I know.

Q. How long before you filed on the timber claim did you go up to go over the claim?

A. Well, I can't say just how long.

Q. Did you go alone, or who went with you?

A. No, I didn't go alone; there was Mr. and Mrs. EhrmantROUT, and my brother Frank R. Martin, and there were some others, I think, that went the same day, but not in our crowd, not in our rig.

Q. Who located you after you arrived at this timber claim? A. Mr. Downs, I believe.

(Testimony of Cleora M. Wickersham.)

Q. Had you known Mr. Patrick Downs before that?

A. No, I had no acquaintance with him.

Q. Did you have any agreement with Mr. Downs as to what you should pay him for locating you on a timber claim?

A. Of course, I understood that I was to pay him \$25.

Q. And did you pay him the \$25?

A. Yes, sir.

Q. When?

A. I don't just remember the date, but it was after I located I suppose.

Q. Did you go to him and pay him personally, or did you give it to somebody to pay for you?

A. I think I did; I think my father gave it to him, but I am not sure whether I gave it to him myself or not.

Q. You went to Star ranch, did you?

A. Somewheres near Placerville, isn't it?

Q. Did you go to the Star ranch?

A. I don't know what ranch it was; it was a sort of halfway house that we stopped at.

Q. Where did you meet Mr. Downs on this occasion?

A. That day?

Q. Yes.

A. Well, I saw him—he was on horseback and we were in the rig, and perhaps I saw him a time or two on the way up there, and then after we got up there.

Q. Do you remember what place you went to?

(Testimony of Cleora M. Wickersham.)

Did you go to the Star ranch?

A. I don't just remember whether that is the name or not, but it was an eating-house, I know that.

Q. Did you stop there over night?

A. Yes.

Q. Do you remember what day of the week it was that you arrived there?

A. No, I do not.

Q. Do you remember what day of the week you started back to Boise?

A. No.

Q. Do you remember what day of the week you arrived at Boise on your return?

A. No, but I suppose the same day we started from there, but I don't remember, no.

Q. And did Mr. Downs take you over a claim?

A. Yes.

Q. How far was that from this eating-house where you stopped?

A. Well, it was quite a ways I think; we went on horseback; it seemed a long ways; I don't know just how far.

Q. Now, how long was that before you filed?

A. Well, it might have been two weeks and it might have been two months; I don't just remember, but I think it was some time.

Q. Now, do you understand what I mean when I say "filed"? I mean how long was that before the first time you went to the land office and filed any papers? How long after you saw the land did you go to the land office to file any papers?

A. Well, I suppose I went the next day.

Q. Well, did you go there Sunday night?

(Testimony of Cleora M. Wickersham.)

A. Well, it seems as though we went there Sunday night, with the understanding that there was to be a scrip man there, or something like that.

Q. Well, did you stay there Sunday night?

A. I didn't, no, but I had a man take my place.

Q. Who was the man that took your place?

A. A Mr. Lindsay; he was a brother in law of mine at that time.

Q. Is he living now?

A. Yes, he is living.

Mr. BUNDY.—Is he well?

A. I hope so.

Mr. GORDON.—She said he was a brother in law of hers at that time. I want to know if he is still a brother in law of yours.

A. Well, no, I guess not.

Q. And did you pay Mr. Lindsay for staying in line for you? A. I did not.

Q. When you went out to look at this land with Mr. Downs, did he show you a claim and tell you he would locate you on that claim? A. Yes.

Q. And did he give you a description of that claim, or numbers, as you call it?

A. Perhaps he did, but I don't remember of it.

Q. Did he tell you where you could have your papers prepared or made out?

A. Where I should have them?

Q. Yes. A. No, I don't think so.

Q. Did you go any place to have your papers made out? A. You mean the filing papers?

Q. Yes.

(Testimony of Cleora M. Wickersham.)

A. Well, I suppose I did, but I don't remember.

Q. Did you go to Mr. Kinkaid's office to have them made out?

A. Well, I went there for something.

Q. That was before you went to the land office?

A. No, I don't think I went there before I went to the land office.

Q. Do you know where you received the papers that you filed in the land office, the sworn statement, the non-mineral affidavit; they are the first papers you filed in the land office; do you know where you got them?

A. Well, I don't remember much about it.

Q. Haven't you an idea where you got them?

A. I suppose I should have.

Q. Did you get them from Mr. Kinkaid?

A. Well, I don't know; we got some papers there or had some transaction, but—

Q. Well, did you go to Mr. Kinkaid's office alone, or who went with you, on the occasion you did go?

A. Well, my brother was with me, Frank.

Q. Did you pay any money into the land office when you filed these papers?

A. I suppose I did.

Q. Do you remember it?

A. I don't remember much about it; I was sick at the time.

Q. Did you know of anybody at that time that was purchasing timber claims?

A. No, not in particular.

Q. Did you know of anybody in general?

(Testimony of Cleora M. Wickersham.)

A. I don't know as I did know of anyone.

Q. Had your father sold his timber claim at that time? A. I think so.

Q. Did you know to whom he sold his?

A. No, I don't.

Q. You sold your timber claim, didn't you?

A. Yes.

Q. To whom did you sell yours?

A. Well, I don't know. Mr. Kinkaid, it seems, made out the papers, or something; I don't know the name that was on the papers; I disremember.

Q. Did Mr. Kinkaid give you the money for the property when you sold it?

A. Well, I couldn't say whether he did or not.

Q. Did you go to see him about it?

A. Well, I was up there.

Q. Up to his office? A. Yes.

Q. Who was with you?

A. My brother Frank.

Q. And was it on that occasion that you signed the deed for this property?

A. I suppose it was.

Q. Now, do you remember whether he paid you any money or not?

A. No, I don't just remember, but I suppose he did.

Q. How much money did you get for your claim?

A. I think it was \$800.

Q. Did he give you \$800 at one time?

A. I don't suppose so, no.

Q. Now, what proportion, or in what installments

(Testimony of Cleora M. Wickersham.)

was it given to you, do you remember? Was it in two payments? A. No, I don't think so.

Q. What is your best recollection?

A. The fact is, I don't remember very much about it, because I was ill at the time and had to be carried up to the land office and so on, and, of course, the business was done for me more through others than I did it myself.

Q. You remember the occasion of making your final proof in the land office, don't you?

A. Yes, sir.

Q. How much did you pay in the land office at that time, do you remember?

A. Well, not just the amount, but whatever was customary, I suppose.

Q. Was it \$400?

A. Well, I know it was something near that.

Q. Who went to the land office with you, do you remember? A. Well, my father and brother.

Q. And do you remember where you received the money that you paid in the land office?

A. Where I received it?

Q. Yes. A. I had it already; it was mine.

Q. Where did you get it?

A. Well, I had it; it was my own money; I didn't borrow it.

Q. Do you mind telling where you got it from?

A. No; it was left to me by my deceased husband.

Q. What was his name? A. Davidson.

Q. How long had he been dead?

A. About three years.

(Testimony of Cleora M. Wickersham.)

Q. And did you have the money in the bank at that time? A. Yes, sir.

Q. Which bank? A. Commerce.

Q. And did you draw it out of the bank the morning you went to the land office?

A. I don't know whether I did it or had it done.

Q. I mean you gave a check to someone for it the morning that you went to the land office to make this proof.

A. I don't know whether I did, or whether I had it in the house, or just how.

Q. But you kept an account at the Bank of Commerce at that time? A. Yes, sir.

Q. And I understood you to say that your husband had been dead about three years, died some time in 1900? A. Yes.

Q. And how long had you had that insurance money?

A. Well, I suppose I got it perhaps two or three months after.

Q. And did you keep that in the bank?

A. Yes.

Q. Bank of Commerce, is that right?

A. Yes, sir.

Q. Did you have any other bank account here except in the Bank of Commerce?

A. No, sir.

Q. Did Mr. Kinkaid ever come to see you about purchasing this property?

A. No, he did not.

Q. You went to see him? A. Yes.

(Testimony of Cleora M. Wickersham.)

Q. Did you just go up there to ask him if he wanted to buy it?

A. I don't know as I did, in so many words; I don't remember just how the transaction did come about; I know I sold it.

Q. Did you pay any of the expenses of the team you went up with to look over this land?

A. Yes, sir, I did.

Q. How much did you pay?

A. Well, there was four of us; I think the team came to \$8, and I paid my part.

Q. Did you ever make but the one deed at the instance of Mr. Kinkaid? A. Why, no.

Q. Were you ever asked to make another deed?

A. No, sir.

Q. And how long after you made your proof did you sell?

A. Well, I think perhaps six weeks or two months, something like that.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Cleora M. Wickersham (Snow), dated September 14, 1903; the non-mineral affidavit of Cleora M. Snow, of the same date; the testimony of Cleora M. Snow, given on final proof, dated December 24, 1903; and the cross-examination attached, all of which papers have been identified by Cleora M. Snow, now Mrs. Wickersham, as having been signed by her; the notice of publication, dated September 14, 1903; the testimony of the other witnesses on final proof; the cross-examination of them; the receiver's receipt, and the

(Testimony of Cleora M. Wickersham.)

register's certificate, dated December 24, 1903; certified copy of the patent, dated December 29, 1904; all to the northeast quarter of section 15, township 6 north of range 4 east, Boise Meridian.

Mr. BUNDY.—Aren't you offering the deed?

Mr. GORDON.—I can't find the deed.

(Papers marked Plaintiff's Exhibit No. 133A to 133O, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Wickersham, as I understand you, at the time you filed on this land your health was not good.

A. At the time I filed.

Q. At the time of your original filing, or was it at the time of your final proof?

A. Yes, sir, final proof.

Q. At that time you had to be assisted to the land office?

A. Yes, sir.

Q. And, as I understand your evidence, the business part of making this filing and proving up, and ultimately selling, was conducted by your brother for you, largely.

A. Well, I think so, or father; I don't just remember; they were with me, I think.

Q. And the matter of getting papers made out and paying land office fees, and things of that kind, were attended to by them?

A. I think so.

Q. At the time you filed on this land, Mrs. Wickersham, had you at that time entered into any agreement, written or oral, express or implied, with any person, firm, or corporation, by which you had agreed

(Testimony of Cleora M. Wickersham.)

to turn over or deed this property, or any interest in it, to them, or any of them? A. No, sir.

Q. Did you enter into or have in existence any such agreement at the time you made your final proof? A. I had none.

Q. Did you ever, at any time, enter into any agreement with any person, firm, or corporation, by which they, or any of them, acquired any interest in or lien upon the land you were acquiring from the Government? A. No, sir.

Q. It is charged in the complaint, by the Government, in this action we are trying, Mrs. Wickersham, that you made this entry at the request of and for the benefit of the Barber Lumber Company, John Kinkaid, A. E. Palmer, Pritchard, Rand, and the other defendants. Is that true or false, as far as you are concerned?

A. It is false, as far as I am concerned.

Q. And it is alleged in this complaint that you agreed with them that you would make the entry and that you would then go before the land office, and, at their request, and at their solicitation, you would testify to facts which you knew were false, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that true or false? A. It is false.

(Witness excused.)

[Testimony of Frank R. Martin, on Behalf of the Complainant.]

FRANK R. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank R. Martin?

A. Yes, sir.

Q. Where do you reside, Mr. Martin?

A. 2008 North 14th Street, Boise.

Q. Are you a brother of Mrs. Wickersham, who just left the stand?

A. Yes, sir.

Q. What is your age?

A. Twenty-eight.

Q. And what is your occupation?

A. Well, my occupation is mining.

Q. What do you mean by that?

A. Why, working in mines.

Q. Are you a mining engineer?

A. No, just a miner.

Q. And you were of the same occupation in September, 1903?

A. Yes.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, of Frank R. Martin, and ask you if that is your signature to that paper.

A. Yes, sir.

Q. I show you the non-mineral affidavit of Frank R. Martin, dated September 14, 1903, and ask you if that is your signature to that paper.

A. Yes, sir.

(Testimony of Frank R. Martin.)

Q. I show you the testimony of Frank R. Martin, given on final proof, December 15, 1903, and ask you if you signed that paper?

A. Yes, sir.

Q. Did you sign the cross-examination attached?

A. Yes, sir.

Q. I show you deed, dated December 23, 1903, made by Frank R. Martin to George S. Long, and ask you if you signed that deed?

A. Yes, sir.

Q. And you acknowledged it before John M. Haines?

A. Yes.

Q. You are also a brother of Wheeler H. Martin, are you?

A. Yes, sir.

Q. Who first spoke with you about taking up a timber claim?

A. I think my brother did.

Q. That is Wheeler H.?

A. Yes, sir.

Q. And did he arrange for the party that you went with?

A. Well, I couldn't say that he did; I was up there the other side of the timber.

Q. And he telephoned for you to meet him?

A. No, he came after me on horseback.

Q. Do you remember what day of the week he came after you?

A. No, sir.

Q. Do you know how long it took you, after he arrived at the place you were stopping, to get to the Star ranch?

A. Possibly, let's see, two or three days, two days, I guess, something about that.

Q. About sixty odd miles, isn't it?

A. Yes, about sixty miles, I think.

(Testimony of Frank R. Martin.)

Q. And after he got up to where you were, you were about two or three days getting down to the Star ranch?

A. Two days, I think, about two days.

Q. Do you remember the time of day you got to the Star ranch? A. No, sir.

Q. Do you remember the day of the week that you arrived there? A. No, I do not.

Q. Do you remember the day of the week that you located?

A. It was along towards the last of the week, or the first, I wouldn't say which.

Q. After you located did you return to your ranch where you were, or mine where you were?

A. No, I came here.

Q. And do you remember what day you arrived here?

A. I wouldn't say whether it was Saturday or not.

Q. What day do you think it was?

A. I rather think it was Saturday, but I wouldn't say for sure.

Q. And you came with your brother, Wheeler H.?

A. Yes, sir.

Q. Who located you up there?

A. Patrick Downs.

Q. And did you pay Pat anything for locating you? A. Yes, sir.

Q. Did you pay it there on the spot?

A. No, sir.

Q. When did you pay him?

(Testimony of Frank R. Martin.)

A. Some time after I filed, I don't know just how long.

Q. And where did you pay him?

A. I think I met him on the street some place and paid him.

Q. And after you filed you remained down here some time, did you?

A. I don't know whether I remained down here, or whether I went back and went to work again; it seems to me, though, that I went back up to the Magnolia mine, where I was working.

Q. Now how far did you stop on that occasion from the land office?

A. How far from the land office?

Q. Yes.

A. Why, I stopped there about, on North Ninth street, 1618 North Ninth.

Q. How far is that from where the land office was?

A. That was about a mile.

Q. And did Mr. Downs tell you who would prepare your papers for you when you were up there?

A. I don't think he did.

Q. Who did prepare the first papers you filed in the land office?

A. I believe it was John Kinkaid.

Q. Did you know John Kinkaid at that time?

A. No, sir.

Q. Do you remember what day you went to Kinkaid's office?

A. No, I do not; I don't remember.

Q. Did you go there alone?

(Testimony of Frank R. Martin.)

A. I believe I did.

Q. Who told you to go there?

A. Why, I think I asked Mr. Downs where I could get the papers made out, and I think he suggested Mr. Kinkaid.

Q. Did you pay Mr. Kinkaid anything for them?

A. I don't think I did at the time.

Q. Did you ever pay him anything for them?

A. I don't know whether I did or not; I might have.

Q. And when Mr. Downs located you, did you have any talk with him about the kind of land you wanted?

A. Yes, I told him I wanted timber land.

Q. And did he tell you that he had some nice timber land? A. Yes, sir.

Q. And he took you out and showed you one claim and you took it, did you? A. Yes, sir.

Q. How far was the claim you located from the Star ranch?

A. I would judge about three miles.

Q. Did you go all over the claim?

A. Yes, sir.

Q. All four corners? A. Yes, sir.

Q. And he gave you a description of the claim, or the numbers, as we call it?

A. I believe he did, yes.

Q. And did you take them to Mr. Kinkaid, or did he have them?

A. I think I took them to Mr. Kinkaid; I am not certain.

(Testimony of Frank R. Martin.)

Q. Now did you get into the line at the land office on Saturday night or Sunday night?

A. I wouldn't say when, but I know I was in the line.

Q. Do you remember how many nights you stayed in line? A. One night, I think.

Q. Would you be positive that you didn't stay there two nights? A. Yes.

Q. Sure you didn't stay there two nights?

A. Yes, sir.

Q. Now did you have your papers when you went to the land office, into the line, your filing papers?

A. I think I did; I am not sure; I think I had my papers.

Q. And did you and your brother go together?

A. We were in the same line, yes.

Q. Was Mrs. Snow in the same line?

A. Yes.

Q. Did she stay there all night?

A. No, I believe she had somebody stay in her place.

Q. Do you know who stayed in her place?

A. No, sir.

Q. Who suggested that you should go down there and get in line Sunday night?

A. I don't know; the word was passed around that somebody was going to scrip the land, and those that wanted their land should go and take their position.

Q. Was that before you came down?

A. No, sir; I think it was Thomas L. Martin that

(Testimony of Frank R. Martin.)

first told me about it.

Q. Did he come out to the house and tell you that?

A. No, I believe he met us on the street.

Q. So you went to the land office that evening?

A. Yes, sir.

Q. And what time did you get away next morning?

A. I think about ten or eleven o'clock, ten o'clock, something like that; I wouldn't say for sure.

Q. Was Mr. Faraday and Mr. Harbaugh and Mr. Ehrmantrout up there the same time you were?

A. Yes, I think they were.

Q. You knew them all? A. Yes.

Q. How much money did you pay in the land office on the occasion that you filed your first papers?

A. I don't remember now just what it was; it seems to me it was either seven and a half or twelve dollars and a half, something like that.

Q. At that time did you know of anybody that was purchasing timber claims?

A. No, I didn't.

Q. Did you know of a market for timber claims?

A. No.

Q. Had your father sold his timber claim at that time?

A. I don't know whether he had or not.

Q. He didn't tell you?

A. No, he didn't tell me.

Q. And you knew of no market, either present or prospective, for the sale of these timber claims?

A. No, I hadn't investigated at all.

(Testimony of Frank R. Martin.)

Q. Do you remember the occasion of your making your final proof? A. Yes.

Q. Do you remember who went to the land office with you?

A. One of the Ehrmantrouts, and Faraday, and Holiday or Holloway, I have forgotten his name.

Q. Harbaugh? A. Harbaugh, that's it.

Q. Do you remember how much money you paid in the land office? \$412.50, I believe.

Q. Did you pay that in check or in cash?

A. Cash.

Q. Did you draw the money out of the bank that morning? A. No, sir.

Q. Where did you get it?

A. Out of my pocket.

Q. How long had you had that in your pocket?

A. Oh, various times, three or four years.

Q. How long had you had that \$412 in your pocket?

A. I couldn't say how long I had had it all in my pocket.

Q. Had you had some of it in your pocket for three or four years?

A. I presume I had, different places.

Q. Did you get any money from your father that morning?

A. I don't believe I did that I remember of.

Q. Did you and your brother and father go to the bank and get some money that morning?

A. I don't think we did.

Q. Would you say that you didn't?

(Testimony of Frank R. Martin.)

A. I don't think we did, but I don't think I got any money that morning; I know I didn't for that purpose.

Q. And you had four hundred and some odd dollars in your pocket and had had some of it in your pocket for four years?

A. Yes; I wouldn't say it was the same money; it had changed hands, of course.

Q. How much of that money had you kept in your pocket?

A. I couldn't say; of course, I have had more than that and less than that.

Q. Had you had \$100 in your pocket all that time?

A. Very near it, I suppose.

Q. Did you keep a bank account?

A. No, sir.

Q. Never had a bank account?

A. Never had, at that time.

Q. What did they pay you up at this mine you were working at, at that time? A. \$3.50 a day.

Q. And you board yourself?

A. We paid a dollar a day for board.

Q. Did you work every day? A. Yes, sir.

Q. Winter and summer?

A. Yes, sir, except holidays.

Q. Now up to that time, the time you made your final proof, had you heard of anybody that was buying timber claims? A. No, I believe not.

Q. Then did you go away from Boise and go back to the mine, at that time? A. I think I did.

Q. And how long did you remain there?

(Testimony of Frank R. Martin.)

A. After I filed, you mean?

Q. No, after you made your final proof?

A. I wouldn't say whether I went back after I made the final proof or not, right away; I might have; I have forgotten it mostly.

Q. Do you remember how long it was after you made your final proof that somebody offered to purchase this property from you?

A. Possibly a month or such a matter; I don't remember; or possibly two months; I couldn't say.

Q. Wasn't it a week?

A. I wouldn't say as to the length of time; I have forgotten it.

Q. And who was it that purchased your property from you? A. John Kinkaid.

Q. Did he come to see you?

A. No, I believe I went to see him.

Q. And had somebody in the meantime told you that he was buying timber claims?

A. I think I heard the remark that he was purchasing timber.

Q. But you had never heard it until after you made your final proof? A. No, sir.

Q. How long before you made this deed did you go to see him? A. I don't remember.

Q. What is your best recollection? Did you sell it the first time you went to see him?

A. I don't think I did.

Q. How long after the first visit did you go again?

A. Oh, possibly a week.

Q. You are sure it wasn't the next day?

(Testimony of Frank R. Martin.)

A. I wouldn't say whether it was the next day or whether it was a week.

Q. Why didn't he buy it the first time you went?

A. I don't remember; we might not have decided on the price, or something, or it might not have suited me.

Q. What might not have suited you?

A. The price.

Q. What did you ask him for it?

A. It seems to me I asked him \$1000.

Q. Did he make you an offer?

A. I think he did.

Q. What did he offer you for it?

A. I think it was \$850.

Q. And you wouldn't take \$850; is that right?

A. Not the first time.

Q. And then did he raise his bid?

A. No, sir.

Q. And then you thought it over awhile and then went to see him again?

A. Yes, sir.

Q. He didn't come to see you about it?

A. No, sir.

Q. Didn't write you about it?

A. No, sir.

Q. And then after thinking it over for some time you went back and sold it for \$800?

A. I believe I did.

Q. He dropped \$50 instead of raising?

A. Yes, sir,

Q. You made your final proof on December 15, 1903, and you made this deed on December 23d, just a week and a day?

A. Yes.

(Testimony of Frank R. Martin.)

Q. And all that transpired in that week, did it?

A. Yes, sir.

Q. Did Mr. Kinkaid have the deed prepared when you went to his office the second time?

A. I wouldn't say.

Q. What is your best recollection?

A. I really have no recollection of that.

Q. Do you know whether he drew it while you waited there?

A. He might have drew it while I was waiting.

Q. How long were you at his office?

A. Possibly an hour.

Q. And he paid you then, did he?

A. Yes, sir.

Q. Did he pay you in cash or in check?

A. In cash.

Q. And you kept that money in your pocket, didn't you? A. Yes, sir, part of it.

Q. Didn't deposit in the bank?

A. I don't think I did.

Q. Did you ever make any other deed but this one deed to this property?

A. No, sir, I think not.

Q. Were you ever asked to make another deed?

A. No, sir.

Q. When you came from the Star ranch down here did you come in a wagon, or did you ride horse-back?

A. I came in a light wagon, a spring buggy.

Q. Who was in the buggy with you?

A. My sister and Mrs. and Mr. Ehrmantrout.

(Testimony of Frank R. Martin.)

Q. And did you pay anything for riding in that buggy? A. Yes, sir, I think it was \$2.50.

Q. Who did you pay it to?

A. I think I paid it to Mr. Ehrmantrout.

Q. You didn't go up with Mr. Ehrmantrout, did you? A. No, sir, I was already there.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Frank R. Martin, dated September 14, 1903; the non-mineral affidavit of Frank R. Martin, of the same date; the testimony of Frank R. Martin given on final proof, dated December 15, 1903; and the cross-examination of Frank R. Martin attached, all of which papers have been identified by Frank R. Martin as having been signed by him; the notice of publication, dated September 14, 1903; the testimony of the other witnesses, given on final proof; and the cross-examination of said witnesses; the receiver's receipt, and the register's certificate, dated December 15, 1903; the deed, dated December 23, 1903, by Frank R. Martin to George S. Long, consideration \$800, which has been identified by Frank R. Martin as having been signed and acknowledged by him; the certified copy of the patent, dated December 1, 1904; all to the northeast quarter of section 21, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 134A to 134N, inclusive.)

Q. I will ask you, do you know Mr. George S. Long? A. No, sir.

Q. You read this deed, didn't you?

(Testimony of Frank R. Martin.)

A. I believe I did, yes, sir.

Q. Did you notice that Mr. Long's name was in the deed?

A. I don't remember.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, at the time you filed on this land was there in existence any agreement, written or oral, express or implied, with any person, firm, or corporation, by which you had promised and agreed to turn over to such person, firm, or corporation, or such person as they should direct, the title which you might acquire from the Government?

A. I did not.

Q. At the time you made this filing did any person, firm, or corporation have any interest in or lien upon the land you were acquiring?

A. No, sir.

Q. Did you have any such agreement as I have mentioned at the time you made your final proof?

A. I did not.

Q. Did you ever, at any time, prior to the actual sale of this property, have any agreement with any person of any kind by which they had any interest in or lien upon this property?

A. No, sir.

Q. It is charged in this complaint, Mr. Martin, that you entered this land for the benefit of and at the request of the Barber Lumber Company, Kin-kaid, Pritchard, Palmer, Rand, and the other defendants. Is that true or false?

A. It is false.

Q. And it is alleged that you entered into an agreement with them, a conspiracy with them, by

(Testimony of Frank R. Martin.)

which you were to enter the land for their benefit and at their request, and then at their solicitation go to the land office and testify to what you knew to be false, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that true or false? A. It is false.

(Witness excused.)

[Testimony of Thomas L. Martin, on Behalf of the Complainant.]

THOMAS L. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Thomas L. Martin?

A. Yes, sir.

Q. What is your occupation, Mr. Martin?

A. Attorney.

Q. How long have you been practicing law?

A. Two years.

Q. In 1905 what was your occupation?

A. I was working for the Mutual Life Insurance Company of New York.

Q. Were you in any way associated with Mr. Frank Martin at that time? A. No, sir.

Q. Were you ever associated with Mr. Frank Martin in business, or are you now associated with him? A. Yes, sir.

Q. What is the association?

A. Partnership in the practice of law.

Q. And he is your uncle, is he?

(Testimony of Thomas L. Martin.)

A. Yes, sir.

Q. Mr. Martin, you took up a claim under the Timber and Stone Act in 1903, did you?

A. Yes, sir.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, of Thomas L. Martin, and ask you if that is your signature to that paper? A. This is my signature.

Q. I show you the non-mineral affidavit of Thomas L. Martin of the same date, and ask you if that is your signature? A. Yes, sir.

Q. I show you the testimony of Thomas L. Martin, given on final proof, December 11, 1903, and ask you if that is your signature? A. Yes, sir.

Q. And the cross-examination attached; did you sign that? A. Yes, sir.

Q. I show you deed, dated January 2, 1904, made by Thomas L. Martin, and Bertha Martin, husband and wife, to George S. Long, and ask you if that is your signature to that paper? A. Yes, sir.

Q. And that is your wife's signature?

A. Yes, sir.

Q. And you acknowledged that before Frank Martin, both of you?

A. I don't remember who the acknowledgment was before; that is Frank's signature.

Q. Mr. Martin, you went up to look over this claim before you filed on it, did you?

A. Yes, sir.

Q. Who went with you?

A. Do you mean in the party or in the rig in

(Testimony of Thomas L. Martin.)

which I went?

Q. I mean in the rig.

A. Mrs. Anna Fisher, my sister in law.

Q. Anybody else?

A. No, sir, one-seated rig.

Q. Who else were along that day, went up to look at these claims, do you remember?

A. Why, either on the road between here and Star ranch or at Star ranch we caught up with a rig in which Mr. and Mrs. Eagleson, who were lately from Iowa, and I think Clyde Eagleson and his wife—I am not positive as to the second couple,—but the first were the Eaglesons; and the locator, Mr. Downs, Pat Downs, went up the same day; he was horseback—no, he was at Star ranch; we met him at Star ranch.

Q. When was this that you went over this land?

A. It was either on Sunday or Saturday, the 12th, or Saturday, the 10th of September; it was on the Saturday prior to my filing on Monday, and I don't know whether it was the 10th or 12th of September.

Q. I notice in your final proof paper—that must be a mistake—in response to the fifth question that was asked you, “When and in what manner was such inspection made? A. October 2, 1903. I walked over this land with Mrs. Fisher and Joseph Penrod.”

A. That isn't a mistake; I can explain that. I was over it twice, once on the Saturday prior to filing, and the plat in the land office showed that a

(Testimony of Thomas L. Martin.)

portion of this was mineral ground, had at some time been filed upon as mineral, and prior to my final proof I went back; I don't know who was with me; and I went back and went over the ground to see if there were any placer workings there, and found where there had been, and the trees were grown up there, and so I presume that answer is all right.

Q. When did you leave Boise, what day?

A. I would leave the day before.

Q. Friday? A. Yes.

Q. And what day did you return?

A. On Sunday.

Q. Did you know what land you were going to be located on before you left here? A. No, sir.

Q. And you say you met Mr. Penrod up there?

A. Mr. Downs, the locator.

Q. Was Mr. Penrod there when you were there?

A. I don't remember whether Joe Penrod was at Star ranch or not; it seems to me he was, but I am not positive; he wasn't, however, to the best of my recollection, a member of our party in going to the timber.

Q. And your party returned Sunday some time, as I understand.

A. Got in here I think about noon, or just a little after.

Q. And did you get into line that evening?

A. I was third in line.

Q. Why did you get into line Sunday evening?

A. There was a general rumor that these lands

(Testimony of Thomas L. Martin.)

were going to be scripped by a fellow by the name of Lake, if I remember, who, at that time, lived in West Fairview addition, and I was down to the office—when I came home I took the team to the livery barn and I soon came down to the office, and there was that feeling, just a rumor, it was not traceable to any particular source, that this land was going to be scripped, all which the State had not taken, and our office, or my uncle's office, to which I had a key, was next door to the land office, in the Sonna Building. Along in the afternoon, about four o'clock, I think, *think*, or half past, I stepped into the hall, and George Chapman and a little fellow by the name of Buchanan were standing here in front of the door of the land office; I knew them both personally, so I went up to them and said "What are you doing here," or something to that effect, and they said "We are waiting for the land office to open"; and I inquired what the rush was, and they said they were hired to stand in line, and the parties weren't going to take any chances on the land being scripped, or something to that effect. And I said, "If that is the condition, I will just line up here too," and so I lined up, and very soon four or five more, of which Mr. Pew was one—no, I hired a man then to stand in line for Mrs. Fisher; Mrs. Fisher's husband was out of town, and I had taken her up with me, so I hired Mr. Chapman's son to stand in line for her, and then soon after that a number of people from the Dry Buck country lined up, which made ten or twelve of us.

(Testimony of Thomas L. Martin.)

Q. Did you stay in line all the time?

A. Stayed in line until the land office opened.

Q. You didn't get out of the line?

A. Yes, I went out; I would say that by eight or nine or ten o'clock there were probably thirty or forty of us in line, and things got settled down—by that time, after the police had tried to put us out, things got settled down, and we agreed that a man could go out for a midnight lunch or whenever necessity called him out, and his place in line would be respected by the others in line, and so that arrangement enabled us all to go, and I think, we all went out.

Q. How many people did you tell of that line-up?

A. I don't remember.

Q. Did you tell anybody?

A. I don't remember that; I might have, but I don't remember.

Q. You got into line number three?

A. I was third.

Q. And you didn't go away from there, as I understand it, you didn't leave the office until there was somewhere between twenty and thirty behind you.

A. You mean leave the line?

Q. I mean leave the building.

A. I didn't leave the building until midnight, practically midnight; when I went to get something to eat I went out of the line. I went into our office and got all the chairs and brought them out, and the next door.

(Testimony of Thomas L. Martin.)

Q. I mean you didn't go around to various houses and tell the people to come and get into line?

A. No, that was their lookout, the same as mine; I wasn't protecting their interests.

Q. Do you remember Mr. Penrod being in line?

A. I think he was.

Q. Do you remember preparing his papers for him, or having them prepared for him?

A. No, I think Frank prepared his papers.

Q. Who prepared your papers?

A. I don't know, but I presume that Frank did; I think he brought them to me next morning. If you will let me see the writing—(takes papers). This is Frank's. I think he came and handed them to me, I think he came the next morning.

Q. Did you see Mr. John Kinkaid in the Sonna Building that evening after the line formed?

A. No, sir.

Q. Don't remember him being there?

A. I didn't see him.

Q. Well, when you went up to see Mr. Downs, what time of day was it when Mr. Downs located you?

A. It was in the afternoon some time, in the latter part of the afternoon. I would like to explain further in regard to the line-up too, in regard to the rumors: I have never thought that that rumor was unfounded, because along in the evening some time—I would say perhaps nine o'clock—I am pretty positive that Mr. Lake himself came up into the building, and saw this line-up, and went up and got

(Testimony of Thomas L. Martin.)

the policeman—who is now on duty—to come up and put us out of the building; first he went and got Mr. Peter Sonna, who owns the building, and who lives a block and a half from the building; Mr. Sonna came up and ordered us out of the building, and we refused to go; he then said he would get the police and put us out. While he was getting the policeman someone left the line and stepped over to Mr. Hawley's office, or communicated with him—I mean to his residence, which was then in the same block with the building, and Mr. Hawley was the mayor, and he instructed the police to let the line alone.

Q. Did he come down there himself?

A. I think not; I think Mr. Howry came down, who was the patrolman, and ordered us out, and we gave him the laugh and told him he had better go out and ask the mayor before he put us out, and he was going to put all of us in jail. And so I have never felt, personally, that the rumor that Mr. Lake was going to scrip this land was unfounded.

Q. Was Mr. Lake in the timber business?

A. Mr. Lake was in the locating business, and has since been in the locating business.

Q. Do you know who he was locating for?

A. No, I don't; this rumor was that he was going to scrip this land for Governor Schofield.

Q. Of Wisconsin? A. Of Wisconsin.

Mr. KEIGWIN.—Was Mr. Lake wealthy enough to scrip that much land for himself?

A. I know nothing at all about his finances.

(Testimony of Thomas L. Martin.)

Q. When you went up to see Pat Downs about locating you, had you had any talk with him prior to that time about locating you?

A. No, not with Mr. Downs.

Q. Had you had any talk with anybody about locating you?

A. Mr. Kinkaid. At that time the State had asked to have this land surveyed, and had its sixty days preference right of entry, and in the meantime Mr. Downs and Mr. Kinkaid were locating people on this land, what was not taken by the State, and that was general knowledge, common knowledge; and I went to Mr. Kinkaid—I believe I asked Mr. Downs on the street if he could get me a timber claim, and I think he told me to see Kinkaid, and I went to Mr. Kinkaid, and I got from him the terms of their locating.

Q. Did he give you a description of the land?

A. No, sir.

Q. And he told you to go to Downs and he would locate you?

A. They were made up in parties; he told me to be ready at a certain time, and go, "and you will meet Mr. Downs at the Star ranch," or "Mr. Downs will go up to the Star ranch," or "You will meet him there and he will locate you."

Q. How long was it, after you had that talk with Mr. Kinkaid, was the party arranged for you to go?

A. I don't remember.

Q. Was it a day or two or a week or two weeks?

A. I haven't the slightest recollection; it was

(Testimony of Thomas L. Martin.)

some time after the plats were filed until the sixty days of the State were up, but I don't remember when it was.

Q. Where were the plats filed?

A. In the land office.

Q. And Mr. Downs located you on a claim. Did you tell him you wanted any particular claim, or did he take you out and say, "This is the claim for you"?

A. I couldn't tell him any particular claim; I knew nothing about the timber land.

Q. You took the one he gave you?

A. Yes, sir.

Q. And did you pay him a location fee, or did you pay it to Mr. Kinkaid?

A. I paid him \$25, I think I paid it in gold.

Q. Did you pay it then, or after you returned?

A. I think I paid it the day of filing, on Monday.

Q. Did you know of anyone that was buying timber claims at that time?

A. No, sir, I did not.

Q. And you made your final proof?

A. Yes.

Q. And your wife took a claim too, did she?

A. She took it two or three years later.

Q. Not at that time? A. No.

Q. Do you remember whether you paid the money that you paid at the land office on final proof in check or cash?

A. My impression is that I paid it by check, but

(Testimony of Thomas L. Martin.)

I wouldn't be absolutely positive of that.

Q. Four hundred and some odd dollars?

A. \$412, I think it was.

Q. And was that your own money, or did you borrow it?

A. Well, it was my own. I think your question is rather double.

Q. Had you borrowed it?

A. I had hypothecated some notes for part of it; the notes were mine, so the money was mine when I got it.

Q. Do you remember from whom you borrowed it?

A. I think a portion of it from the manager of the Mutual Life at that time; I am not positive whether I borrowed it from him or the Capital State Bank; I at one time borrowed some money from Mr. Case, but whether this was the time I don't know.

Q. How much did you borrow?

A. \$250, I think I borrowed. If that was the money I borrowed from Mr. Case, I paid him ten per cent interest on it, because I know when I went to pay it he didn't want to take any interest, and I insisted on paying it.

Q. Then at the time you made your final proof you didn't know of anyone that was purchasing timber claims? A. No, sir.

Q. Did you know of anybody that had sold any?

A. I had no personal knowledge of anyone having sold.

(Testimony of Thomas L. Martin.)

Q. How long after you made your final proof did you start negotiations for the sale of this property?

A. I don't remember that either.

Q. With whom did you negotiate for the sale of it?

A. I think the negotiations were with Kinkaid; I think Kinkaid paid me the money for it.

Q. That is John Kinkaid? A. Yes.

Q. And did you go to him, or did he come to you?

A. I think I went to him; I think someone told me of having sold, or something, and I went to Kinkaid.

Q. And I understood you to say you went to see him? A. That is my recollection of it, yes.

Q. And did he buy it on that occasion?

A. That day?

Q. Yes. A. No.

Q. How long afterwards?

A. I don't remember, but I know that he didn't the day I went; I think he said he would see about it, or something of that kind, or to see him again.

Q. As near as you can remember, how long after that was it that you sold?

A. I don't remember, Mr. Gordon; that was a long time ago, and it wasn't a very important transaction to me.

Q. Do you remember how much he paid you for it? A. I think he paid me \$800.

Q. And who prepared the deed? Did you prepare it or did he prepare it?

A. If you will let me see the deed I might be able

(Testimony of Thomas L. Martin.)

to tell you. (Takes deed.) My impression is that I prepared it on an Underwood typewriter; that is only an impression, but I think I prepared it on an Underwood.

Q. Do you remember whether Mr. Kinkaid paid you in cash or by check?

A. I think he paid me in bills.

Q. You didn't know Mr. George S. Long?

A. No.

Q. And you didn't know whether he was purchasing this property for himself or someone else?

A. I had no knowledge who the grantee was.

Q. You didn't care, did you?

A. I didn't care as long as I got the money, no; it didn't make any difference to me whose name was in the deed.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Thomas L. Martin, dated September 14, 1903; non-mineral affidavit of Thomas L. Martin, of the same date; testimony of Thomas L. Martin, given on final proof, December 11, 1903; the cross-examination of Thomas L. Martin on that occasion, all identified by Thomas L. Martin as having been signed by him; the testimony of the other witnesses, and the cross-examination of them, before the land office on final proof; the notice of publication, dated September 14, 1903; the receiver's receipt, and the register's certificate, dated December 11, 1903; the deed, dated January 2, 1904, made by Thomas L. Martin and Bertha Martin, husband and wife, to George S. Long, consideration \$800,

(Testimony of Thomas L. Martin.)

having been identified by Thomas L. Martin as having been signed by himself and Bertha Martin, his wife, and acknowledged before Frank Martin, notary public; certified copy of the patent, dated December 1, 1904; all to the southwest quarter of section 23, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 135A to 135N, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, you went to see Kinkaid at the suggestion of Mr. Downs, and at that time did you understand that they were acting together as partners in the locating business? A. Yes.

Q. This man Lake that the rumor had it was likely to scrip this land was W. H. Lake or W. L. Lake?

A. I don't remember his initials; I have seen them a number of times.

Q. Do you know that he did a good deal of work for the Barber Lumber Company at that time, as a cruiser?

A. Well, I didn't know; I had never heard of the Barber Lumber Company at that time, 1903.

Q. But the purpose of the line-up was to prevent this man Lake from scripping the land?

A. Yes.

Q. Now, it afterwards turned out that the fellow that stood at the head of the line made way for Mrs. Scully?

(Testimony of Thomas L. Martin.)

A. Mrs. Scully was first; George Chapman was standing in line for Mrs. Scully.

Q. Mr. Martin, at the time you entered this land and made your filing on it, was there in existence any contract or agreement, express or implied, written or oral, with any person, firm, or corporation, by which you had agreed to turn over or transfer to such person, firm, or corporation any right, title, or interest in or to the title you might acquire from the Government of the United States?

A. There was absolutely none of any kind.

Q. Was there any such agreement at the time you made your final proof? A. No, sir.

Q. Did any person, firm, or corporation, up to the time of your actual sale of this property, have any right, title, or interest in it, or lien upon it?

A. Absolutely none.

Q. It is charged in this complaint, Mr. Martin, that you entered this land at the request of and for the benefit of the Barber Lumber Company, John Kinkaid, Horace S. Rand, A. E. Palmer, L. M. Pritchard, and the other defendants. Is that allegation true or false, as far as you are concerned?

A. The charge is absolutely false.

Q. And it is charged in this complaint that pursuant to that agreement, and pursuant to that understanding, you made entry of the land, and then, at their solicitation, went to the land office and testified to what you knew to be false, for the purpose of defrauding the United States out of a hundred and sixty acres of timber land. Is that allegation true

(Testimony of Thomas L. Martin.)

or is it false?

A. The allegation is absolutely false, and the Government will never be able to produce a word of testimony in support of the allegation, so far as I am concerned.

Q. They are doing the best they can; I think you are the hundred and twenty-sixth one.

A. If the other hundred and twenty-five are in the same box I am, they are in a bad fix.

(Witness excused.)

[Testimony of Harry L. Clyne, on Behalf of the Complainant.]

HARRY L. CLYNE, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Harry L. Clyne?

A. Yes, sir.

Q. Where do you live, Mr. Clyne?

A. I live at 1316 North Sixth Street, Boise, Idaho.

Q. How long have you lived in Boise?

A. I have lived here since the winter of 1891.

Q. Were you living here when you took up a claim under the Timber and Stone Act?

A. I was, sir.

Q. What is your occupation, Mr. Clyne?

A. I am a mechanic, paper hanger and decorator, by trade.

(Testimony of Harry L. Clyne.)

Q. And do you work at that trade or do you work at other things?

A. I work at other things; I work at mining, sometimes I work at that for a month or two.

Q. You took up a claim under the Timber and Stone Act in October, 1901?

A. Yes, sir, I think so, October or November, 1901.

Q. I show you timber and stone land sworn statement of Harry L. Clyne, dated October 31, 1901, and ask you if that is your signature to that paper?

A. Yes, sir.

Q. I show you non-mineral affidavit, dated October 31, 1901, of Harry L. Clyne, and ask you if you signed that?

A. Yes, I think I did; that is my signature.

Q. I show you the testimony of Harry L. Clyne, given on final proof, dated January 24, 1902, and ask you if you signed that?

A. That looks like my signature.

Q. Mr. Clyne, who first spoke with you about taking up a timber claim?

A. A gentleman by the name of Nelson.

Q. What is his first name?

A. John Nelson.

Q. Where did you see him?

A. Met him on the street.

Q. And what did he say to you?

A. He asked me if I didn't want to make two or three hundred dollars easy money.

Q. And what did you say to him?

(Testimony of Harry L. Clync.)

A. I told him, sure, I was ready for it.

Q. And did he tell you how to make it?

A. Yes, sir.

Q. What did he say?

A. He said he was locating people on timber, or was cruising timber, and had a timber claim that if I wanted a description of it he would give it to me for a consideration.

Q. What was the consideration? A. \$25.

Q. And did you give him the \$25?

A. I did.

Q. And did he locate you on the claim?

A. He gave me the description. I was working in the Basin at the time, that is, in Placerville, and I knew the timber land up there just as well as he did, after he gave it to me; anyway I had been all over it.

Q. And did you then file?

A. Yes, sir, filed the next day after I give him the \$25.

Q. And had you been up there to see the land in the interim?

A. No, not between the time I gave it to him and the time I filed I hadn't been up there; I had been up there before that.

Q. You worked up there in that locality?

A. I worked at Placerville, yes, sir.

Q. Did you prepare your own papers, or who prepared them for you?

A. I went to the land office with the description that Mr. Nelson gave me, and asked Mr. Garrett about the quarter section, and located that, took up

(Testimony of Harry L. Clyne.)

that quarter section.

Q. Well, did I understand you to say that this sworn statement, you prepared that yourself, or did somebody fill in the blanks for you?

A. Well, now, I couldn't say as to that, but it seems to me like probably I filled that in; I wouldn't swear that I did.

Q. You don't know of anybody else that did, do you?

A. No, sir; there was two of us went to the land office at the time.

Q. Who were they?

A. Mr. William Gross and myself.

Q. Well, did you ever have to pay any other locating fee than that? A. Yes, sir.

Q. Who did you pay that to?

A. I think Mr. Wells.

Q. John I. Wells?

A. Yes, sir, it was held out at the time that I got my final payment; after I sold the claim, he held out \$25 for cruising fees.

Q. What was that for?

A. Cruising fees, he told me.

Q. And did you pay any money when you went to the land office to make your original filing?

A. Yes, sir.

Q. How much, do you remember?

A. I don't remember; it seems to me like it was \$12.25, something like that.

Q. Now, when you filed on this land did you know what you were going to do with it?

(Testimony of Harry L. Clyne.)

A. Yes, sir; well, the supposition was that I was going to turn it over for a consideration, where I could make a piece of money out of it; at least Mr. Nelson gave me to understand.

Q. Did he tell you who you were to turn it over to?

A. No, sir, he didn't tell me who I was to turn it over to.

Q. Well, did you meet John I. Wells with reference to this land, before you made your final proof?

A. Yes, sir.

Q. Did you have any talk with him about it?

A. Yes, sir.

Q. What was the talk?

A. Well, some time after I had made final proof, Mr. Wells approached me, or after I made filing, before I made final proof, Mr. Wells approached me and says, "I see you have filed on a timber claim up in the Basin"; I said "Yes." He said, "It was a claim I was holding for a man by the name of Frank Goldtrap," and I says, "I can't help that," I says, "I have filed on it and paid my fees for filing." "Well," he says, "have you got the money?" or intimated to me as much as to say "Have you got the money to prove up on?" and I told him I hadn't, and he says, "When you get ready to prove up probably I can let you have the money or get it for you."

Q. Did you go to see him?

A. I did.

Q. Where did you go to see him?

(Testimony of Harry L. Clyne.)

A. Went to his office in the Pack Building.

Q. And did he give you the money?

A. He did.

Q. How much did he give you?

A. \$420.00.

Q. How long was that before you made your final proof?

A. Well, the \$420 he gave me to make this proof on when I proved up on this timber, I think it was in January or February, 1902; I am not sure of the dates, but it was in that spring of that year of 1902, the fore part of 1902.

Q. Did he tell you what to say when you went to the land office, when you were asked where you got that money?

A. Well, he told me when he gave it to me, "If you have got someone you can get the money from it will look much better when you go there, to say that you got the money from someone else," and I mentioned to him that I was working for a man by the name of Springley, and I said, "I can leave part of the money over there and he can give me a check for it," which I did.

Q. And it was with that you paid in the land office?

A. Yes, sir.

Q. And did they give you a temporary receipt at the land office?

A. Yes, sir.

Q. What did you do with that?

A. I took it over to Mr. Wells at his office.

Q. Did you make a deed for the land at that time?

A. No, sir.

(Testimony of Harry L. Clyne.)

Q. When was anything said about selling this land?

A. Well, I think it was along about the fore part of September, 1902.

Q. Did you ever get any other money from Mr. Wells before you made a deed for the land?

A. Yes, sir; at a time after I proved up I borrowed \$50 from Mr. Wells—I suppose I borrowed it from him; I went to him and asked him for \$50, and he let me have it.

Mr. BUNDY.—You say that was after proving up?

A. Yes, sir, that was between the time I proved up and the 5th of June, because on the 5th of June I left for Thunder Mountain.

Mr. GORDON.—Q. And to whom did you sell this land?

A. Well, sir, I couldn't tell you.

Q. With whom did you negotiate the sale?

A. Well, it was between Mr. Wells and Mr. Pritchard.

Q. State the circumstances of your selling it.

A. Well, to go into the details of it, at the time I borrowed this \$50 from Mr. Wells, in that spring of 1902, I gave him \$5 for the loan of the money; he throwed me out \$50 and I gave him \$5 right there on the table. On the 5th of June—well, in May, about the 20th of May, a gentleman came from Pittsburg and employed me to go into Thunder Mountain; they paid me \$1200 down in the Idanha Hotel. I left here, bought my outfit and left here on the 5th of

(Testimony of Harry L. Clyne.)

June, 1902. I came back. I am not sure whether it was the 29th of August, but it was between the 29th of August and the 3d of September in 1902; and between that time, between the 3d and the 10th of September, I sold this claim, this land, I was supposed to have, and went to Mr. Pritchard's office in the Sonna Block and signed a deed for it.

Q. Did you go there alone? A. Yes, sir.

Q. Who told you to go there?

A. Mr. Wells.

Q. How much money did you receive when you got there?

A. I received \$175, the balance of what was supposed to be due me, after taking out the extra \$25 for filing the claim, that he didn't get anything that I had paid Nelson.

Q. You say that you made that deed in 1902?

A. September, 1902, yes, sir.

Q. Did you ever make any other deed?

A. I did not.

Q. Do you remember whether the deed you made was in blank or not?

A. It was filled out, that is, there was some writing in the deed, but whether it was a date or not I couldn't say.

Q. Did you ever get a patent?

A. I had a notice of a patent coming here.

Q. What did you do about that—anything?

A. When I got the notice I went to Mr. Wells and told him I had got the notice, and he said that was all right, that they would take care of it.

(Testimony of Harry L. Clyne.)

Q. That understanding that you had with Mr. Nelson to turn this land over and make a piece of money out of it, did I understand you to say that was before you located? A. Yes, sir.

Q. Did you get as much money as you expected from that understanding?

A. Well, no, I expected about \$300 from what he told me, and I got \$250, less \$25 that Mr. Wells held out on me for cruising fees.

Q. And Mr. Wells never cruised anything for you, did he?

A. No, sir, I didn't know Mr. Wells was in the business at the time I filed.

Q. You gave as your witnesses Norman Young and Lucien Maxfield? A. Yes, sir.

Q. You knew them and gave those names yourself? A. Yes, sir.

Q. Have you ever been asked to make another deed to this property to anyone?

A. No, sir.

Q. Did you ever make but the one deed?

A. I never did.

Q. And you say you signed this deed in Mr. Pritchard's office?

A. I signed a deed there.

Q. Was your wife along with you?

A. No, sir.

Q. Where was she? A. Home.

Q. In the city here? A. Yes, sir.

Q. And did she sign it the same day?

A. I don't know; I don't know whether she ever

(Testimony of Harry L. Clyne.)

signed it or not.

Q. She wasn't at Mr. Pritchard's office with you?

A. No, sir.

Q. And when you went there to sign the deed was it already prepared? A. Yes, sir.

Q. And you signed it at that time?

A. Yes, sir.

Q. Did you tell Mr. Pritchard that you owed Mr. Wells any money? A. No, sir.

Q. How did he know that he was only to give you \$250 or \$225?

A. \$275? Well, I suppose probably a note had been sent over to him, that is the supposition, that he might have sent him a note over to hold out so much money; they might have been working together; I don't know anything about it.

Q. Did you give Mr. Wells a note for the money you got from him? A. No, sir.

Q. Did you pay him any interest?

A. Paid him \$5.

Q. Was that for the \$50? A. Yes, sir.

Q. You didn't pay him anything for the \$420?

A. No, sir; I took him back the change, what was left over the final proof.

Q. And was that the time you took the temporary receipt back? A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone sworn statement of Harry L. Clyne, dated October 31, 1901; the non-mineral affidavit of Harry L. Clyne, of the same date; the testimony of Harry L. Clyne, given on final proof, January 24, 1902; and

(Testimony of Harry L. Clyne.)

the cross-examination attached, all of which have been identified by Harry L. Clyne as having been signed by him; the notice of publication, dated October 31, 1901; the testimony of the other witnesses on final proof, and the cross-examination thereof; the register's certificate, and the receiver's receipt, dated August 19, 1902; the deed, made by Harry L. Clyne and Cecilia Clyne, husband and wife, to A. E. Palmer, consideration \$950, identified by Harry L. Clyne as having been signed by himself and wife, dated July 18, 1903; certified copy of the patent, dated February 1, 1904, all to the southeast quarter of section 6, township 7 north of range 5 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 136A to 136P, inclusive.)

Q. Mr. Clyne, did you know A. E. Palmer?

A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Clyne, at the time Nelson spoke to you, did you know there was any land open for entry?

A. Yes, sir.

Q. How long had you known that?

A. Well, I think I had been working in the Basin for about six or seven months when I heard of this land being opened up there.

Q. And how long before the time Nelson spoke to you was it that you heard?

A. Two or three months, anyway, that I heard of them filing up there.

(Testimony of Harry L. Clyne.)

Q. The filing there had just commenced?

A. Yes, sir.

Q. Comparatively few had filed up to that time?

A. I think so.

Q. This man John Nelson is the fellow they call Jack Nelson?

A. Yes, sir.

Q. And he started in and located a few others besides you?

A. I don't know anything about that.

Q. And he afterwards skipped the country?

A. I don't know anything about that.

Q. Did you ever see him after you paid him the \$25?

A. Yes, sir.

Q. Did you ever see him about this land?

A. No, sir.

Q. Was he here when it came time to prove up?

A. No, sir.

Q. Did you have any arrangement with Mr. Nelson that he was to furnish you any money?

A. No, sir.

Q. Did Mr. Nelson tell you he would give you the money to prove up on?

A. He told me that he would see that I would get it.

Q. Did you go to him to hunt him up to see if you could find him, when it came time to prove up?

A. No, sir.

Q. Did you have any talk before you filed on this land, with Wells?

A. No, sir.

Q. Or Downs?

A. No, sir, didn't know Pat Downs,

(Testimony of Harry L. Clyne.)

Q. Or Kinkaid? A. No, sir.

Q. Or Pritchard? A. No, sir.

Q. Or Steunenberg? A. No, sir.

Q. Or Barber? A. No, sir.

Q. Or Moon? A. No, sir.

Q. Or Rand? A. No, sir.

Q. Or Palmer? A. No, sir.

Q. And you had no talk with any of the defendants in this case before or at the time you filed?

A. Not that I know of.

Q. Had you had any talk with anyone except this Mr. Nelson prior to the time you filed?

A. No, sir.

Q. And the talk you had with Nelson was that he simply told you that he was locating people there, and he had a claim that he would give you the numbers of for \$25, if you wanted to locate?

A. He didn't tell me he was locating people; he just come to me and asked me if I wanted to make two or three hundred dollars easy money.

Q. What did he say?

A. He said he would give me the description of the piece of timber, and he says, "It will cost you \$25," and I told him to fire it out, and he did so.

Q. Was that the substance of the conversation that you had with Nelson? A. Yes, sir.

Q. Was that all he said to you?

A. Only he said he would get the money for me to prove up, if I didn't have the money to prove up; he knew of my circumstances at that time, because

(Testimony of Harry L. Clyne.)

he was a painter himself, and we was working together.

Q. Was that all the conversation you had relative to the land? A. Yes, sir, relative to the land.

Q. So that if you had any agreement with Nelson it is embraced in the talk you had with him?

A. Yes, sir, that's about as far as it went.

Q. And you paid him \$25?

A. Yes, and took his receipt for it.

Q. And the money was your own?

A. Yes, sir.

Q. And you came, in due course, to the land office, to make your filling? A. Yes, sir.

Q. And there were some fees to pay there?

A. Yes, sir.

Q. And that was your money? A. Yes, sir.

Q. Did Mr. Nelson furnish you that?

A. No, sir.

Q. So that up to the time you filed your first papers in this matter you had not entered into any agreement with anybody, had you, Mr. Clyne?

A. In regard to selling?

Q. Yes. A. No, sir.

Q. I show you the first paper you filed here, October 31, 1901, in which you say, among other things: "I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That was ab-

(Testimony of Harry L. Clyne.)

olutely true at the time you filed, was it not?

A. It was true, just as far as that goes, yes, sir. The only understanding when I filed on it was that I was to have the money to prove up if I needed it.

Q. That is rather an evasive answer. The question is, at the time you filed your first papers, had you entered into any agreement of any kind or character, written or oral, express or implied, with any person, firm, or corporation, by which you had obligated yourself to transfer to such person, firm, or corporation, or anybody else, the title you might acquire from the United States.

A. No further than Mr. Nelson told me I could make this easy money, and he would furnish me the money and furnish me a buyer, and I told him all right.

Q. You have told us the conversation that you had with Nelson before you filed? A. Yes, sir.

Q. You have told us, you said, all the conversation you had with him about this?

A. About all.

Q. About all? Was there any more?

A. I can't think of any more.

Q. And you hadn't had any talk with anybody except Nelson?

A. No, not up to the time of filing.

Q. At the time you filed your first papers had you entered into any agreement, with any person, firm, or corporation, by which you had agreed to turn over the title you might acquire to such person, firm, or corporation, or to any person they should

(Testimony of Harry L. Clyde.)

direct? A. No, sir.

Q. Had you entered into an agreement to turn it over to them without any consideration?

A. Nothing no more than just what I stated to you, that Nelson said he would have a buyer, and I hadn't made any agreement to turn it over to him.

Q. Did you make this filing at the request of the Barber Lumber Company? A. No, sir.

Q. Or at the solicitation of the defendants in this action that I named to you a while ago?

A. No, sir.

Q. Or any of them? A. No, sir.

Q. Did you make this filing at the request of Mr. Nelson?

A. I made the filing at the request of Mr. Nelson; that is, I would put it in that way, that I probably wouldn't have filed if it hadn't been for him.

Q. At his suggestion?

A. Yes, at his suggestion.

Q. Was it at his request?

A. No more than what I stated to you, he wanted to sell these quarters, he give me the description of this property for the cost of \$25, which I paid him.

Q. Did you locate this for the benefit of Mr. Nelson?

A. No, sir, I located it for my own benefit.

Q. Did you locate it for the benefit of anybody except yourself? A. No, sir.

Q. Did you know Mr. Nelson's circumstances as well as he knew yours?

A. Well, pretty near.

(Testimony of Harry L. Clyne.)

Q. Did you know, was he a man of means?

A. Well, he was like myself; he was working and getting his wages for it.

Q. You didn't understand that he was going to buy the timber himself? A. No, sir.

Q. Did Mr. Nelson tell you that he was representing somebody that was buying timber?

A. He didn't give me any names.

Q. Do you know, as a matter of fact, whether he did represent anybody? A. No, sir.

Q. Don't you know, as a matter of fact, that he didn't? A. No, sir, I don't know that.

Q. Do you know of anybody coming around here buying timber claims that Nelson was representing?

A. I haven't yet.

Q. Have you ever heard of anybody that Nelson was acting for? A. No, sir.

Q. So that the only conversation you had had up to that time was with a man by the name of Nelson, who was a painter? A. Yes, sir.

Q. And you didn't know him as a cruiser?

A. No, sir.

Q. He wasn't engaged in the real estate or timber business, as far as you knew? A. No, sir.

Q. He was simply a brother mechanic?

A. Yes, sir.

Q. And said to you that if you wanted to make some easy money he had some numbers that he would give you for \$25? A. Yes, sir.

Q. And you paid him the \$25? A. Yes, sir.

Q. And he said he would see that you got a

(Testimony of Harry L. Clyne.)

buyer? A. Yes, sir.

Q. And he didn't tell you who that buyer was?

A. No, sir.

Q. So you entered it for your own benefit?

A. Yes, sir.

Q. And without any agreement at that time to turn it over to anybody? A. I did.

Q. And at that time you didn't know who you was going to turn it over to? A. No, sir.

Q. And you didn't know what price you were going to get for it? A. No, sir.

Q. And you didn't have any idea of making any money out of it except by selling it at a profit?

A. I expected to make three or four hundred.

Q. You didn't understand that you was entering the land as the employee of Mr. Nelson, did you?

A. No, I didn't understand that I was entering the land as an employee of his.

Q. Or of anybody he represented?

A. No, he didn't represent anyone, only he said he was cruising for those people up there.

Q. You knew he didn't have any connection with anyone in the timber business at that time, didn't you? A. No, I didn't know it.

Q. Did you know of anyone that he was connected with? A. No, sir.

Q. Now, at the time you came to make your final proof, had you at that time entered into any agreement of any kind as to what you was to do with this property?

A. No—well, up until the day of the final proof

(Testimony of Harry L. Clyne.)

I hadn't.

Q. Had you at the time you made your final proof at the land office?

A. It was understood that I was to turn it over to some company that would be here to buy the timber.

Q. Who made that arrangement with you?

A. Mr. Wells.

Q. Did Mr. Wells tell you who he represented?

A. No, sir.

Q. Didn't he tell you that it was the Barber Lumber Company? A. No, sir.

Q. Did he tell you it wasn't the Barber Lumber Company? A. No, sir.

Q. Did he tell you who he represented?

A. No, sir.

Q. What did he tell you?

A. He said, "I will let you have the money, and when you get ready to sell out," he said, "we will buy it from you."

Q. Do you know whether he said "I" or "we"?

A. No, sir, I don't.

Q. Have you heard that he was representing anybody at that time?

A. Yes, representing—I heard that him and Mr. Kinkaid were together.

Q. At that time? A. Yes, at that time.

Q. And who did you understand they were operating for? A. I didn't understand.

Q. Haven't you ever heard? A. No, sir.

Q. You have been around this lawsuit three

(Testimony of Harry L. Clyne.)

weeks, haven't you?

A. I don't know as I have.

Q. You are an amateur detective, aren't you, Mr. Clyne?

A. I don't know as I am.

Q. You make that a business?

A. I don't know as I acknowledge it.

Q. Don't make it a secret, Mr. Clyne; aren't you?

A. No, sir.

Q. I am probably misinformed then. Have you heard then, up to this time, that Mr. Wells was representing some company?

A. No, I never heard that Mr. Wells was representing anybody at that time.

Q. Then at the time he gave you this money he didn't tell you that he was representing anybody?

A. No, sir.

Q. You understood that the money, of course, was a loan?

A. Well, I supposed it was; I got it from him; I supposed he was loaning it to me.

Q. You understood that he was lending it to you?

A. That's what he told me.

Q. And at the time he loaned it to you he didn't ask you to sell?

A. No, sir, not at that time.

Q. There was nothing said by Mr. Wells about what you were to do with that land?

A. Only he said, "When you get ready to sell I will find you a buyer."

Q. And then, months afterwards, you concluded to sell?

(Testimony of Harry L. Clyne.)

A. Yes, sir, in September, 1902.

Q. And you proved up some time I think in January? And after you made your final proof and got your final receipt, which I think wasn't issued to you—they were all held up for some time; it wasn't issued to you until some time—

A. I don't know just when it was.

Q. Don't you remember getting your receipts?

A. No, I never got but one; that was when I proved up, I got a receipt for the money.

Q. Don't you recall that at that time all these timber claims were held up and the final receipts weren't issued until some time later? A. Not mine.

Q. Yes, I think it was. You got a temporary receipt on January 24, 1902.

A. Yes, that might have been.

Q. Now, you took that over to Mr. Wells, which he held as security for the money he had advanced you. You don't remember getting the real final receipt later? A. No, sir.

Q. So that some time in the September following you got ready to sell? A. Yes, sir.

Q. And when you did you went to Mr. Wells?

A. Went to Mr. Wells and told him I was ready to negotiate the sale, and he said, "Go to Mr. Pritchard," which I did.

Q. Didn't you understand that Mr. Pritchard was simply acting for Mr. Wells, and that Mr. Wells was the man that was doing the business?

A. I don't know; I didn't understand.

Q. Mr. Pritchard was simply a lawyer, notary

(Testimony of Harry L. Clyne.)

public? A. Yes, sir.

Q. And when Mr. Pritchard paid you he took out the \$400 that Mr. Wells had loaned you, and the \$50 additional, and then took out another \$25, which he spoke of as a location fee? A. Yes, sir.

Q. Did you say anything to Mr. Pritchard about not getting \$650?

A. I told him it looked pretty small.

Q. The price, they told you, was \$650?

A. No, I was given to understand by Mr. Nelson, as I told you before, that there was two or three hundred easy money in it, and only \$250 was what I was getting, less this \$25.

Q. That was the talk you had with Nelson?

A. Yes, sir.

Q. Did you have any talk of that kind with Wells?

A. No, no more than I told him I didn't think I ought to pay the other \$25, and he said he didn't get anything of what Nelson had collected.

Q. Nelson wasn't connected with Wells in any way, was he?

A. He told me he was working for Wells and Downs; I didn't know those people—I knew Mr. Wells by sight, but I didn't know Mr. Downs at all.

Q. Nelson told you that he was working for these people? A. Yes, sir.

Q. Are you sure of that?

A. I am sure of it.

Q. That is something new.

A. Maybe you haven't asked it?

(Testimony of Harry L. Clyne.)

Q. I have asked you to give us the conversation, and now you say that he was working for Wells and Downs.

A. I told you that at the start; probably you didn't hear it.

Q. So that the only talk you had with anybody was with Jack Nelson about this land?

A. Yes, sir.

Q. And the only talk you had with Jack Nelson was that if you wanted to make some money the way to do it was to file on a timber claim, and that he had numbers, and that he would sell you the numbers, all for \$25?

A. That's about right.

Q. So that when you went to the land office and filed your papers and swore that at that time you had entered into no agreement whereby you had obligated yourself to sell or turn over to anybody the title you would get, you was telling the truth, wasn't you?

A. I supposed I was; I intended to tell it.

Q. Is it true now? A. It is true.

Q. And you never did have any agreement of that kind up to and including the time you made final proof?

A. No, sir.

Q. And up to the time you made your final proof you were under no obligation to anybody to turn that property over to them, were you?

A. No, sir, I was not.

Q. And up to that time had any person acquired any interest in or lien upon the quarter section of land that you got from the Government?

(Testimony of Harry L. Clvne.)

A. No, sir.

Q. At the time you made your final proof, and at the time you got your final receipt, then the status of this claim was about this, that you had a hundred and sixty acres of land, and you owed John I. Wells certain sums of money, and you were at liberty to sell it to whom you pleased and pay him what you owed him?

A. I didn't exactly understand that I was at liberty to sell it to whoever I pleased, for the reason that I told him I would give it to him.

Q. When did you tell him that?

A. At the time I proved up, when I got this \$420 from him.

Q. Then at the time you got this \$420—

A. He was to have the first chance at it.

Q. Had you sold it to him then?

A. No, sir.

Q. Had you agreed to sell it to him then?

A. Only that he was to have the first show at it; I was giving him a show for his money.

Q. So that at the same price he was to have the preference? A. Certainly.

Q. But were you under any obligation to sell it to Mr. Wells, or anyone he represented, at any less figure than anyone else would pay you for it?

A. No, I don't think I was.

Q. Had you entered into any agreement other than that he should be given the first chance when you got ready to sell?

A. Only to secure his money, that's all.

(Testimony of Harry L. Clyne.)

Q. And as additional security, you turned over this receipt? A. Yes, sir.

Q. Now at the time you filed on this land you didn't expect to get the money from Wells, did you?

A. No, I didn't know Wells at that time; I knew him by sight, but I didn't know him in this deal.

Q. You didn't file upon the land with the expectation of getting the money from Mr. Wells?

A. No, sir.

Q. And you didn't file on this land with the expectation of turning it over to Wells?

A. No, sir.

Q. Or anyone Wells represented?

A. No, sir, not at the time I filed on it.

Q. Your purpose in exercising your right as a citizen and filing upon this timber and stone claim was to get the land for what the Government was selling it for and afterwards to sell it at a profit?

A. I purposed to make a profit, yes, sir.

Q. And the money was to be made in the manner I have indicated by selling at a profit?

A. Yes, sir.

Q. And you were not entering that land for or at the request of anybody but yourself, or for the benefit of anybody but yourself?

A. For the benefit of no one but myself and family.

Q. Nor at the request of anybody but yourself?

A. As I said before, on the request or suggestion of Mr. Nelson.

Q. But you didn't understand that Mr. Nelson

(Testimony of Harry L. Clyne.)

had any interest in the land you were about to acquire, did you? A. No.

Q. He was simply paid by you, and that ended his connection? A. Yes, sir.

Q. Did Mr. Nelson have any interest in it further than that? A. No, sir, not that I know of.

Q. Did he have any interest by reason of any agreement you made with him?

A. No, none whatever.

Q. You say that Mr. Wells came to you voluntarily and offered to loan you this money, or did you go to him?

A. Mr. Wells came to me after I had filed, and told me, he says, "Harry, I see you have filed on a timber claim up there that I was holding for Gold-trap," and he says, "When you get ready to prove up," he says, "I don't know what your circumstances are, but," he says, "I will let you have the money, if you haven't got it," or words to that effect.

Q. And that was at or about the time you made your final proof?

A. No, it was two months after I had filed on the land.

Q. I mean, it was at or about the time you made final proof?

A. It was probably—let's see, I filed in October—probably it was in January, the first of January; it might have been along about the holidays.

Q. Now you made your final proof January 24, 1902? A. Yes.

Q. How long before that was it that Wells told

(Testimony of Harry L. Clyne.)

you? A. About the holidays, I guess.

Q. And up to that time you had had no talk with Wells? A. No, sir.

Q. And you never had any talk with the other gentlemen I have mentioned?

A. No, none whatever.

Q. Mr. Clyne, it is charged in this complaint in this action we are trying here that you entered this land at the request of and for the benefit of the Barber Lumber Company, John Kinkaid, Horace S. Rand, A. E. Palmer, L. M. Pritchard, and the other defendants. Is that true or not?

A. I didn't file with the understanding that any of those people were in this deal.

Q. That is hardly the question. It is alleged here in this complaint that the men I have mentioned induced, procured, and requested you to make this timber and stone entry, and that you made the entry at their request and for their benefit. Is that true or not? A. No, sir, I never did.

Q. And it is further alleged in this complaint that pursuant to that agreement you arranged and agreed with the Barber Lumber Company and the other defendants that I have mentioned, and also with Wells and Steunenberg, that you would make this entry for their benefit, and that you would then go to the land office and testify to what you knew to be false, for the purpose of defrauding the United States out of a quarter section of land. Is that true or false?

A. Wells or Steunenberg? I understand just

(Testimony of Harry L. Clyne.)

what you mean, but I know I never made no entries for them people.

Q. Now this action, Mr. Clyne, the United States of America against the Barber Lumber Company—just read over the title of the action and then you will be familiar with it (hands witness paper).

A. I had no understanding with them people.

Q. Just follow my question. It is alleged in this complaint in this action that you made this entry at the request of and for the benefit of the defendants named, and Wells and Steunenberg. Is that true or is it false?

A. That is false.

Q. And it is further alleged that you entered into a conspiracy with these defendants and with Wells and Steunenberg to defraud the United States out of a hundred and sixty acres of timber land.

A. I never entered into any agreement with them people.

Q. And it is alleged in this complaint that pursuant to that conspiracy and agreement, you agreed to and did go before the land office at Boise, and testify to things you knew to be false, at the request and solicitation of these defendants and Wells and Steunenberg.

A. That is false; I did not.

Q. And it is further alleged in this complaint that you gave such false testimony for the purpose of acquiring title to this land, for the benefit of these people, and under an agreement that when you got title you would turn it over to them—

A. I did not.

(Testimony of Harry L. Clyne.)

Q. That is false? A. Yes, sir.

(Witness excused.)

At this time the hearing was adjourned until ten o'clock A. M., Saturday, February 27th, 1909.

Court met at ten o'clock A. M., Saturday, February 27, 1909, pursuant to adjournment, the Examiner and counsel for the respective parties being present, at which time an adjournment was taken until ten o'clock, A. M., Monday, March 1st, 1909.

At ten o'clock A. M., Monday, March 1st, 1909, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Margaret Scully, on Behalf of the Complainant.]

MARGARET SCULLY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mrs. Scully, your name is Margaret Scully?

A. Yes, Mrs. Margaret Scully.

Q. And, Mrs. Scully, where do you reside?

A. I reside at 410 Jefferson.

Q. How long have you resided at Boise?

A. About ten years.

Q. You took up a claim under the Timber and Stone Act in 1903, did you? A. I did.

Q. I show you timber and stone land sworn statement, dated September 14, 1903, and ask you if you signed that paper?

(Testimony of Margaret Scully.)

A. Yes, that is my writing, I think.

Q. I show you non-mineral affidavit of Margaret Scully, of the same date, and ask you if you signed that?

A. Yes, that is my writing.

Q. I show you the testimony of Margaret Scully, given December 10, 1903, on final proof, in the land office. Is that your signature to that?

A. That is mine.

Q. And the cross-examination of Margaret Scully on the same examination. Did you sign that paper?

A. That is my writing.

Q. I show you deed, dated February 1, 1904, made by Margaret Scully to George S. Long, and ask you if you signed that paper?

A. That is my writing, but I don't know who it was; I didn't hear the man's name that I sold it to.

Q. And you acknowledged that before Mr. Richardson, the clerk of the court, did you?

A. I suppose I did, because there was several I acknowledged, and I couldn't just exactly tell as to that, but it must have been.

Q. Mrs. Scully, did you talk to anyone about taking up a timber and stone claim before you went up there to view this land?

A. Well, I heard of it, but I don't know as I had spoken anything about it.

Q. At that time did you know of any persons that were buying timber claims?

A. I did not know of any person.

Q. Did you know of any persons that were selling timber claims?

A. I did not.

(Testimony of Margaret Scully.)

Q. Then you knew of no market whatever for timber claims? A. I knew of no market.

Q. Had you heard that there would be a market for them in the near future?

A. Well, I took it with the intention, but didn't know whether there would be a market, or by whom.

Q. Had you heard that there would be a market, or purchasers for them in the near future?

A. I did not, not in particular; I did not know of any person that was buying, and I supposed that maybe some time this land would come to be salable.

Q. But at that time you didn't expect it to be salable within thirty or ninety days?

A. I did not.

Q. Who located you on this land?

A. It was Mr. Downs.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. And had you met Mr. Downs before then?

A. I had not; I had never met him until I went up to the place.

Q. And you went to view this land with a party, did you? A. I did.

Q. Mr. Willis Ross was of your party?

A. Yes, and his wife, and Mr. Davidson, the lawyer.

Q. William B. Davidson? A. Yes, sir.

Q. Did you know Mr. and Mrs. Ross before then?

A. I had never met them before.

Q. And who arranged for this party?

A. Well, my daughter heard that there was a party going out, and my children were anxious that I

(Testimony of Margaret Scully.)

should take a timber claim, as others were taking them, and so that it how it came that I went up with them; it was a two-seated hack, and four of us went up.

Q. Do you remember the day of the week that you left Boise? A. I do not.

Q. If you went with Mr. and Mrs. Ross you were there the same day they were there?

A. I was there the same day.

Q. Do you remember the day of the week that you returned? A. I do not remember.

Q. Wasn't it Sunday afternoon?

A. I can't tell; perhaps it was. I couldn't tell as to that. Well, it is this way: Of course, I don't remember, and I being a stranger here and being here almost ten years I have never went out much; I have been sick the most of my time.

Q. Did you have any talk with Mr. Patrick Downs as to what he would charge you for locating you on this land?

A. Well, I don't know, at that time, but afterwards; the charge was \$25, I think.

Q. Did you pay that to Mr. Downs, or give it to some one to pay? A. Gave it to Mr. Downs.

Q. Did he come to your house, or did you go to see him?

A. It was my daughter that handled it.

Q. And your daughter's name is what?

A. She was then Viola Scully.

Q. And what is her name now?

A. Viola Eagleson.

(Testimony of Margaret Scully.)

Q. What is her husband's name?

A. Ern G. Eagleson.

Q. Now, did you go to the Star ranch from here?

A. Well, I guess it must have been; I do not know. There was an old lady there, and a gentleman; you know I never inquired. I am not a business person, and I never inquire or take any note of anything like that.

Q. Do you know where you met Mr. Downs?

A. I met him where we stopped first, the first night, the first place we went to. There was too many in there, and we went to—I don't know—some place—I think they kept the Poor Farm, and that was the first place I ever see him.

Q. And did you have any talk with him as to your reasons for coming up there?

A. I did not, any more than I was to take a claim, and he was to bring me over it.

Q. Before you started from Boise you knew you were to meet Mr. Downs there and that he was to locate you on a claim?

A. Yes.

Q. Did you have a letter to Mr. Downs?

A. No, I didn't have any letter.

Q. And you just told Mr. Downs that you wanted him to locate you on a claim?

A. Yes, sir.

Q. And did he locate the party all at the same time, or did he take each of you out separately?

A. No, we all went out at the same time; it was snowing and raining, I know, very much, and I went

(Testimony of Margaret Scully.)

on horseback, and Mrs. Ross went on horseback.

Q. How far from where you stopped over night there was this claim?

A. Well, I think I heard them say, but I can't tell you; I know we went there in the morning and didn't get back till late at night.

Q. And did Mr. Downs take you and those of your party out and point out a claim and say, "I will locate you on this claim, Mrs. Scully."

A. I can't tell anything about that; I didn't hear him say those words.

Q. How did you know which claim you would be located on?

A. We went over it, and he pointed it out, and there was no words about it.

Q. Did he just give you one of the four?

A. Well, I suppose lawyer Davidson knew which; we were all on the same section; I had a hundred and sixty acres, and each one of the others had a hundred and sixty.

Q. Did you pay part of the expense of the team to take you up there and back?

A. I think the team belonged to our party, belonged to Mr. Ross; I know I paid him for taking me up and down.

Q. How much did you pay him?

A. I do not know.

Q. And was there anything said up at the claim, or either on the way going to or returning from the claim, as to when you should go to the land office and file your papers?

(Testimony of Margaret Scully.)

A. No, I didn't hear a word of it.

Q. Did Mr. Downs give you the description of the property? A. He gave me the description.

Q. And what did you do with that?

A. I don't know; I guess I threw it away.

Q. Did you have your papers made up from that?

A. I suppose.

Q. Who made out your filing papers?

A. It was Mr. Waters.

Q. What Mr. Waters?

A. Well, I don't know, I am sure.

Q. Was he a lawyer here?

A. No, sir, he wasn't a lawyer.

Q. Where did you go to see Mr. Waters?

A. He was at the house; he just merely called there.

Q. You say he was just a caller?

A. Just a caller.

Q. And you say you do not remember the day of the week that you returned?

A. I do not remember the day of the week I returned; I suppose you know it; I suppose you have the papers to tell the day of the week I returned.

Q. No.

A. Well, I don't know anything about it anyway.

Q. Did you know the value of this claim?

A. I did not.

Q. Did you know how much the timber on it was worth?

A. I did not know how much the timber was worth. I knew when I was up in North Idaho that

(Testimony of Margaret Scully.)

they were getting a great deal for their timber claims there, but I had never taken up one; my husband was alive then.

Q. Mrs. Scully, do you remember the day of the week that you went to the land office to file these papers? A. I do not.

Q. Do you remember the occasion of going to the land office to file these papers?

A. I don't remember.

Q. I mean, do you remember—

A. I knew that I was going there for that purpose.

Q. Did anyone go with you?

A. I think my daughter went with me.

Q. And was someone holding a place in line for you?

A. Let me see: I think there was.

Q. Do you remember that the morning you went to file these papers there was twenty-five, or thirty, or thirty-five people in line?

A. I know there was a whole string.

Q. And you were the first or second in line?

A. I don't know; you know I didn't pay any attention to anything like that.

Q. Did you pay anybody to hold a place in line for you? A. Yes.

Q. Who was it?

A. Well, I think his name was—I did know; if I could hear it—

Q. Chapman? A. Yes, that was the name.

Q. Did you engage Mr. Chapman to hold this

(Testimony of Margaret Scully.)

place in line for you?

A. Some person engaged him for me.

Q. Who did that? A. I don't know.

Q. And did you ask anybody to employ someone to hold a place in line for you?

A. I think my daughter did.

Q. You didn't? A. I didn't.

Q. And do you know when this person was employed to hold this place in line for you?

A. I didn't know it until I came back.

Q. What did you learn when you returned that would lead you to have somebody to hold a place in line for you?

A. Well, I don't know that—

Mr. BUNDY.—He means when you came back to the land office.

A. You know, the next morning I went to the land office—yes, to the land office, wasn't it?

Mr. GORDON.—Q. Yes.

A. The next morning after I came back.

Q. Yes.

A. And I don't know whether it was first or second I went in; I can't tell; I had never been in court before.

Q. But somebody stepped out of line and you took the place in line that they had held?

A. That was the way.

Q. And your daughter went with you, as I understand, and pointed out the man to you that was holding your place. A. Yes.

Q. And that was a Mr. Chapman.

(Testimony of Margaret Scully.)

A. Yes.

Q. Had you ever seen Mr. Chapman before?

A. I had never seen him before.

Q. And do you know why your daughter had that man hold the place in line for you?

A. Well, I don't know that either. I heard something about scrip being laid on the land, or something like that, but that's all I know.

Q. When did you hear about scrip being laid on the land?

A. I think it was after I came back.

Q. That was the night you returned?

A. Yes, sir.

Q. And now who told you that?

A. I can't tell you that.

Q. Did Mr. Thomas Martin tell you?

A. No, I don't know who Thomas Martin is.

Q. Did you know Mr. John Kinkaid at that time?

A. I did not.

Q. Do you know Mr. John Kinkaid now?

A. I do not.

Q. You never met Mr. John Kinkaid?

A. Well, I didn't know who it was.

Q. Have you ever met Mr. John Kinkaid?

A. Not to my knowledge.

Q. Do you know Mr. Louis M. Pritchard?

A. No, I didn't; I didn't hear the name at all.

Mr. BUNDY.—Before we go any further, it is stipulated that this Chapman isn't the Chapman of the Barber Lumber Company.

Mr. GORDON.—I assume that it isn't.

(Testimony of Margaret Scully.)

Mr. FRASER.—It is George Chapman, a constable that used to be around here.

Mr. GORDON.—You will say that it wasn't the Chapman, the manager of the company?

Mr. BUNDY.—Yes, of course it isn't.

Mr. FRASER.—George Chapman, a constable here in Boise.

Mr. KEIGWIN.—You know that?

Mr. FRASER.—Yes. I say I know it—of course I wasn't in line.

Mr. GORDON.—Is George Chapman here now?

Mr. FRASER.—I don't know whether he is or not.

The WITNESS.—I don't know his initials; I just heard that he was Mr. Chapman.

Mr. GORDON.—Q. Mrs. Scully, did you pay a fee when you went to the land office that morning to file these papers?

A. I don't know; my daughter done my business, and I don't know; I might have known at the time, but I have forgotten all those things; all those things have passed from my mind.

Q. Do you remember the occasion of making your final proof, when you went to the land office and paid in about \$400?

A. I do, I remember that.

Q. Who went with you to the land office that time?

A. My daughter went with me.

Q. Who paid the money into the land office?

A. I paid the money.

Q. Did you pay it in check or in cash?

(Testimony of Margaret Scully.)

A. I paid it in cash.

Q. And had you kept that money in the bank?

A. I had it in the Boise National Bank.

Q. And do you remember when you drew it out of the bank? A. That morning.

Q. Do you know how long you had had the money in the bank that you drew the check on?

A. Well, I can't exactly tell the date, but I think it was in 1903 that I sold my home in Moscow, and I put the money in the bank.

Q. Do you know how much money you put in the bank on that occasion?

A. I think I had eight hundred and something.

Q. And you didn't borrow any money with which to make your final proof? A. No, sir.

Q. Now at the time you made this final proof, did you know of anyone that was purchasing timber claims?

A. I did not know of any person that was purchasing. I know this way: When they made out my papers, the man that made out my papers said—and he give me a receipt for the money—and he said, "Now you can sell this to whom you please."

Q. Who was that—Mr. Garrett?

A. Well, Mr. Garrett was there, but I think it was some person that was up to the desk, but Mr. Garrett was there and questioned me a great deal.

Q. And, as I understood you to say, you didn't know of any person at that time that was purchasing timber claims. A. No, I did not.

Q. And how long was it after you made your final

(Testimony of Margaret Scully.)

proof that you did learn of someone that was purchasing timber claims?

A. Well, I think it was just a short time before I disposed of it.

Q. And who told you about it then?

A. I think it was my daughter that told me.

Q. And what did your daughter say about it?

A. I do not know.

Q. Did she tell you that you could sell your claim? A. I think that was it.

Q. Did she tell you who you could sell it to?

A. No, not that I remember, I don't know that she told me.

Q. You signed this deed. Do you remember where you signed the deed?

A. Well, the land office was in another building. Where was it?

Q. The land office at that time was in the Sonna Building.

A. I guess that must be where the office was.

Q. Do you know whether it was in a lawyer's office or not? A. No, I do not.

Q. Do you remember who you saw and talked with about selling the property?

A. Well, no, I do not.

Q. Did anyone pay you any money when you signed the deed? A. No.

Q. When was the money paid you for your property?

A. Oh, the money was paid when I got my receipt.

(Testimony of Margaret Scully.)

Q. I know you paid, but when did you get some money for the property?

A. It must have been, I suppose, right away; that is all I know.

Q. Before you made the deed or after?

A. It must have been my daughter took the money; really I don't know what it was; I would tell a lie if I was to tell you where it was.

Q. I don't want you to tell anything but the truth, Mrs. Scully. Do you remember whether you were paid for the property when you signed the deed?

A. I suppose I must have been paid for the property.

Q. Do you remember when you were paid for the property?

A. I can't remember now.

Q. And you don't know in whose office it was that you made the deed?

A. No, I don't know.

Q. And you don't know to whom you sold the property?

A. The man was a tall sandy complected man, but I don't know his name.

Q. And all the dealing you had with him was to sign the deed?

A. That was all.

Q. And did Mr. Richardson, the clerk, come to your house and take your acknowledgment, or did you go to the courthouse?

A. I must have went into his office.

Q. Do you remember how much money you received for this property?

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(Testimony of Margaret Scully.)

A. Well, I got something over \$700, but I don't know just how much money.

Q. Was it in check or cash?

A. It was in cash.

Q. Was that brought to you by your daughter, or did you get it yourself?

A. It was brought to me by my daughter.

Q. Then you didn't get it at the same time you signed the deed?

A. She must have gotten it for me.

Q. Did she bring it to you the same day?

A. I don't know. I think she must have put it in the bank; that is my best remembrance. My memory has been so poor, and I have been up here three times on this, this is the third time, and I suppose every time I made a different statement. Of course I don't know; of course I can't tell, because I can't remember. The last time I was up here I was very sick, and they brought the paper to the house to me, to sign a statement, because I wasn't able to come; I was in bed.

Q. Mrs. Scully, were you born in Canada?

A. I was born in Canada.

Q. And do you remember when you were naturalized?

A. My husband was naturalized, but I can't just exactly tell; of course, it must have been—I don't know—it must have been about thirty-five or forty years ago.

Q. You took out naturalization papers here in this court April 25, 1903, did you not?

(Testimony of Margaret Scully.)

A. I suppose I did, but if I didn't, being that my husband was naturalized, took out papers, that would entitle me to the same.

Q. Do you know why you went to the court on April 25, 1903, and took out naturalization papers?

A. Well, I don't know.

Q. You know that you did, don't you?

A. I don't know that I did. Why should I? I didn't know that I should. I think my husband's were taken down to the courthouse. That is all I know, and I really can't tell about it; I can't really remember.

Mr. GORDON.—These are her naturalization papers, and do you want me to put Mr. Richardson on the stand, or will you say that they are hers?

Mr. BUNDY.—If Mrs. Scully don't remember it, I don't want to say that she did.

Mr. GORDON.—These are naturalization papers all right, and I suppose there is no dispute that they were issued to her.

Q. Mrs. Scully, did you ever make any other deed to your timber claim than the one I have shown you?

A. Why, certainly not.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Margaret Scully, dated September 14, 1903; the non-mineral affidavit of Margaret Scully, dated September 14, 1903; the testimony of Margaret Scully, given on final proof, dated December 10, 1903, and the cross-examination of Margaret Scully, taken at the same time, all of which papers have been identified by **Margaret**

(Testimony of Margaret Scully.)

Scully as having been signed by her; the testimony and cross-examination of the other witnesses, given on final proof; the receiver's receipt, and the register's certificate, dated December 10, 1903; the deed, dated February 1, 1904, by Margaret Scully, widow, to George S. Long, consideration \$800, which has been identified by Margaret Scully as having been executed and acknowledged by her; certified copy of the patent, dated December 1, 1904; all to the northwest quarter of section 20, township 6 north of range 4 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 137A to 137P, inclusive.)

The WITNESS.—Now you know I don't like to come up to the office that way, and of course I wasn't born and raised in any business that way, and of course my husband did all my business, and I didn't know anything at all about business.

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Scully, you are a widow lady at present, are you? A. Yes, sir.

Q. And were at the time you made this timber and stone entry? A. Yes, sir.

Q. What is your present age, Mrs. Scully?

A. Seventy-two.

Q. At the time you filed upon this timber and stone claim, and filed your first papers in the land office, Mrs. Scully, that is, the day the men were standing in line, had you at that time entered into any kind of agreement, with any person or firm or

(Testimony of Margaret Scully.)

corporation, by which you had agreed to turn over to any person, firm, or corporation any title which you might get from the United States?

A. Not at all.

Q. Had you made any such or similar agreement at the time you made your final proof?

A. I had not.

Q. Did you ever, at any time, have any agreement with any person, firm, or corporation by which they had any right, title, or interest in, or lien upon, the land you acquired from the United States?

A. Not at all.

Q. Prior to the time you made your final proof had you had any conversation with anybody about selling, or anybody with you relative to buying?

A. Not at all.

Q. It is charged in this complaint in this lawsuit we are trying, Mrs. Scully, that you entered this land at the request of and for the benefit of the Barber Lumber Company, John Kinkaid, A. E. Palmer, and certain other gentlemen who are defendants in this action.

A. I didn't know their names; I didn't know anything about them.

Q. Then that allegation, so far as you are concerned, is not true? A. No.

Q. And it is further alleged in this complaint that you, pursuant to this agreement which they say you had made, entered the land and then went to the land office and testified to what you knew to be false, for the purpose of defrauding the United

(Testimony of Margaret Scully.)

States. Is that true or is it false?

A. It is a falsehood.

Q. There is no truth in it at all?

A. No truth at all.

Q. The statements you made at the land office were strictly true and for your own benefit?

A. Yes, sir, for my own benefit; I ain't wise enough and don't know enough of the world to do anything.

Q. I don't think so either, Mrs. Scully; I think you are wise enough, but I don't think you are bad enough to do anything like that.

A. I know there is a great many sharpers, but I ain't wise enough.

Q. You have been examined here a number of times. Were you up here before Mr. Ruick and examined at one time?

A. No, not in this building. Let me see—I was here—I don't know where it was.

Q. Was it Mr. Ruick?

A. I don't know who it was, but I know I was examined by Mr. Ruick one time, and I don't know the building; it wasn't here. They brought me there; that was the time I was sick, and they brought me there.

Q. Mrs. Scully, do you remember anything about taking out naturalization papers yourself?

A. I can't tell; I could ask my daughter about it, but I can't remember about it.

Q. Did you intend to take a timber and stone entry at some time before you did take one?

(Testimony of Margaret Scully.)

A. Well, I will tell you: A year before that, or some time before it was surveyed, I was up in the Idaho Basin, and they told me that that was timber land and they told me that would come into—

Q. Entry?

A. Yes; and so that was the knowledge I had about it. I went through the timber land and saw it, and I went through the timber land when I went up to take it.

(Witness excused.)

[Testimony of A. L. Richardson, on Behalf of the Complainant.]

A. L. RICHARDSON, produced as a witness on behalf of the complainant, testified as follows:

Mr. BUNDY.—You needn't swear Mr. Richardson; he is an officer of the court.

The EXAMINER.—You don't want Mr. Richardson sworn?

Mr. KEIGWIN.—You are Mr. A. L. Richardson, the clerk of this court, aren't you?

A. Yes, sir.

Q. Do you know Mrs. Margaret Scully, the lady who just left the stand? A. Yes, sir.

Q. Do you remember her appearing in court for naturalization? A. Yes, sir.

Q. I show you here a certificate, which purports to be signed by you, and bearing the seal of your court, and ask you whether you know whether that was issued to this lady who just left the room?

A. Yes, sir, I remember very well; I remember the circumstance very well.

(Testimony of A. L. Richardson.)

Cross-examination.

(By Mr. BUNDY.)

Q. Do you know when her first papers were issued?

A. I don't know; I was looking for her papers, but couldn't find them. She made her proper proof in court or she couldn't have been admitted.

Q. So her first papers were some time prior to this? A. Yes, sir.

Q. But when, you don't know?

A. I think it must have been regular.

Mr. KEIGWIN.—We offer the certificate of naturalization of the witness, Mrs. Margaret Scully.

Mr. BUNDY.—We object to it as incompetent, irrelevant, and immaterial, and not responsive to any issue in this case.

Mr. BUNDY:—Q. Do you know what the policy of the land office here was with reference to timber and stone entries to unnaturalized persons?

A. No, I don't know anything about that.

Q. You don't know why Mrs. Scully applied for this? A. I haven't the slightest idea.

Mr. KEIGWIN.—That is not an original paper?

A. That is a copy; I have the original.

(Witness excused.)

[Testimony of M. Laeta Eagleson, on Behalf of the Complainant.]

M. LAETA EAGLESON, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is M. Laeta Eagleson?

A. Yes, sir.

Q. Mrs. Eagleson, you took up a claim under the Timber and Stone Act in 1904, did you?

A. I think so.

Q. Where did you reside at that time?

A. In Boise.

Q. Were you married? A. I was.

Q. What is your husband's name?

A. Clyde Eagleson.

Q. His name is Benjamin Clyde Eagleson?

A. Yes.

Q. How long have you been married, Mrs. Eagleson? A. Seven years.

Q. I show you timber and stone sworn statement, dated January 2, 1904, of M. Laeta Eagleson, and ask you if you signed that paper.

A. That is my writing.

Q. I show you non-mineral affidavit of the same date, and ask you if you signed that paper.

A. I did.

Q. I show you the testimony of M. Laeta Eagleson given on final proof, dated March 17, 1904, and ask you if you signed that. A. I did.

(Testimony of M. Laeta Eagleson.)

Q. I show you the cross-examination of M. Laeta Eagleson given at the same time, and ask you if you signed that. A. I did.

Q. I show you deed made by Benjamin C. Eagleson and M. Laeta, to A. E. Palmer, acknowledged May 23, 1904, signed by Benjamin C. Eagleson and M. Laeta Eagleson, and ask you if you signed that deed. A. I did.

Q. And acknowledged it before John J. Blake, notary public? A. Yes, sir.

Q. Mrs. Eagleson, who was the first person that spoke with you about taking up a timber claim?

A. My husband, I believe.

Q. And did he go with you when you went to view this land? A. He did.

Q. Who else went with you?

A. A Miss Noble and her brother, and Mrs. Martin, I believe.

Q. What Mrs. Martin?

A. I think Mrs. Tom Martin.

Q. Is that Mrs. Bertha Martin?

A. I can't tell you her first name.

Q. Which Mr. Tom Martin? Do you know his business? A. No, I don't.

Q. At that time did you know of any market for timber claims? A. I did not.

Q. Did you know of any persons that were purchasing timber claims? A. I did.

Q. Who did you know that was purchasing?

A. I can't name now who they were.

Q. Did you know to whom your husband had sold

(Testimony of M. Laeta Eagleson.)

his timber claim? A. I did not.

Q. Did you know whether or not he had sold his timber claim?

A. I don't remember now whether he had or not at that time.

Q. And you say you didn't know the name of any person that was purchasing timber claims?

A. No; there were several about that time, but I don't remember who they were.

Q. Now, did you know Mr. Patrick Downs?

A. I do.

Q. Did you know him at that time?

A. I never knew him before I started out up to the timber.

Q. Did you know Mr. John I. Wells?

A. I did not.

Q. Did you know Mr. John Kinkaid?

A. Yes; I didn't know him at that time; I met him later.

Q. How long after you filed on this claim did you meet Mr. John Kinkaid?

A. I don't think I met him until after I proved up.

Q. And did you know what it was to cost you to locate you on this claim? A. I did.

Q. And did you pay a certain amount to be located, or did your husband pay it for you?

A. I paid it myself.

Q. To whom did you pay it?

A. Mr. Downs.

Q. Did you pay him before you filed, or after-

(Testimony of M. Laeta Eagleson.)

wards? A. Paid him afterwards.

Q. Where?

A. I can't tell you; I have forgotten.

Q. Did he come to your house for it?

A. No, he did not; I think I came down town.

Q. Did you pay him before you sold your property?

A. I don't remember whether I did or not.

Q. What is your best recollection?

A. Well, I can't say.

Q. When you sold your property, do you know how much money you received for it?

A. I do not exactly know how much.

Q. As near as you can remember?

A. About \$600.

Q. And do you know whether or not the expense of locating was taken out of that when you were paid that amount?

A. No, I don't know.

Q. You have no recollection whatever of that?

A. No, I haven't.

Q. And in whose office were you paid the \$600, or thereabouts?

A. In the office of John Kinkaid.

Q. And was that the first time you had met John Kinkaid?

A. It was.

Q. Now, where did you meet Mr. Patrick Downs on the occasion that you were to inspect this land, with the view of locating on it?

A. I didn't see him until we started out on the Idaho City road.

Q. And you met him along the road somewhere?

(Testimony of M. Laeta Eagleson.)

A. I think so.

Q. Did you go to the Star ranch? A. Yes.

Q. Now, do you remember the condition of the weather the day you went to look at this land?

A. It was a clear day.

Q. Was there snow on the ground?

A. Yes, sir.

Q. How deep was it?

A. I don't know just how deep it was.

Q. Two or three feet?

A. Well, I couldn't say whether it was two feet deep or not.

Q. How deep was the snow on the claim that was shown you? A. About that depth.

Q. And how did you go to the claim? Did you go in a wagon, or ride horseback, or walk?

A. We took a cutter out some distance, and then walked.

Q. And did you walk all over your claim?

A. I walked to the corners.

Q. All four corners? A. I think I did.

Q. You are positive of that? A. Yes, I am.

Q. How much did you pay Mr. Downs for locating you? A. Well, I can't say.

Q. How much do you think it was?

A. I think it was \$25.

Q. Was Mr. Downs present when you sold your claim to Mr. Kinkaid? A. I believe not.

Q. Do you know whether you left that \$25 with Mr. Kinkaid for him? A. I don't know.

Q. And when Mr. Downs located you did he take

(Testimony of M. Laeta Eagleson.)

you out to a claim and say, "This is the claim I locate you on"?

A. I think he told me it was my claim, the one that I would file on.

Q. And do you remember who prepared your filing papers that I have shown you?

A. Why, I think they were prepared in the land office; I am not sure.

Q. Who went to the land office with you when you filed your papers?

A. I don't remember who did now.

Q. Did your husband go with you?

A. I am not sure whether he did or not.

Q. Did you know anyone in the land office on that occasion? A. I had met Miss Bush.

Q. Did she prepare these papers for you?

A. I can't tell you who did.

Q. Do you remember whether the papers were prepared in the land office or whether they were prepared before you went to the land office and you took them there with you?

A. I don't think I took any with me when I went there.

Q. Do you remember whether you paid any money in the land office?

A. No, I don't remember whether I did or not.

Q. Do you remember the occasion of making your final proof? A. I do.

Q. Who notified you of the time you were to make your proof?

A. I think Mr. Eagleson told me.

(Testimony of M. Laeta Eagleson.)

Q. Did he go to the land office with you?

A. I think so.

Q. Do you remember whether you paid a certain amount of money in the land office that day?

A. I do.

Q. How much?

A. I don't remember the amount.

Q. Well, as near as you can remember.

A. Well, I don't remember near enough to tell you.

Q. Well, was it \$50 or \$500?

A. I can't say.

Q. Do you remember whether you paid it by check or in cash? A. Cash.

Q. Do you remember where you received that money from to pay into the land office?

A. Got it out of the bank.

Q. Which bank? A. Capital State.

Q. On the day that you made your proof, or before that?

A. I am not sure whether I got it that day or the day before.

Q. Did you borrow it from the bank?

A. I did not.

Q. Do you know how long you had had the money in the bank before that? A. Three months.

Q. Was it your own money?

A. It was my own money.

Q. Do you mind telling where you got the money?

A. It came from my father.

Q. Did he give it to you?

(Testimony of M. Laeta Eagleson.)

A. He gave it to me, yes, sir.

Q. As a present? A. Yes.

Q. You didn't borrow it from him?

A. No, I did not.

Q. Do you remember how much money your father gave you? A. About \$500.

Q. Do you know whether he gave it to you to purchase a timber claim with?

A. No; I told him I thought I would take one up if I could get it; I didn't know at that time that I could get one; I made three attempts before I got one.

Q. Who did you try to get a timber claim from before the one that you did get?

A. Why, I think that Mr. Downs, the locator.

Q. Did you see him with the view of getting a timber claim?

A. No, I didn't talk to him at all.

Q. And on both of those occasions that you tried to get a timber claim did you try to get them through Mr. Downs? A. Yes, sir.

Q. Then you tried to get a timber claim through Mr. Downs three times, and on the third time succeeded? A. Yes, sir.

Q. Did you try to get a timber claim through Mr. Downs when your husband took up a claim?

A. I did.

Q. And was that the time you got the money from your father? A. No, sir.

Q. Was it after you had gotten the money from your father? A. No, it was before.

(Testimony of M. Laeta Eagleson.)

Q. That was when you made the first effort that you spoke of to take up a claim?

A. Yes, sir.

Q. Did I understand you to say you had gotten the money from your father before you made the effort, or after you made the first effort?

A. After.

Q. And was it about the time that you did enter that you got the money from your father?

A. No, I got the money before.

Q. How long before? A. Three months.

Q. Did Mr. Downs give any reason when you tried to take up a claim before for not locating you on a claim?

A. He did locate me the first time.

Q. He did? A. Yes.

Q. And did you pay him \$25 for that?

A. I don't know; I didn't transact the business that time.

Q. And why did you abandon the claim?

A. I wasn't of age, and he said I couldn't take it up.

Q. And then you didn't file any papers in the land office, did you?

A. No, they told me I couldn't.

Q. Did you have to pay Mr. Downs an additional \$25 when you took up your second claim?

A. I don't think he was paid at all until I filed on a claim.

Q. And how long prior to the time that he did locate you was it that he showed you a claim that

(Testimony of M. Laeta Eagleson.)

you couldn't file on because you were not of age?

A. Well, it was at the time that my husband took up a claim; I don't remember the year.

Q. Just a short time before?

A. No, it was several years before.

Q. Were you born in Boise?

A. I was not.

Q. What was your maiden name?

A. Laeta Jaques.

Q. Now, Mrs. Eagleson, do you remember whether this money that you made your final proof with you received from your father, or whether it was money you had inherited from your mother's estate?

A. It was money I received from my father.

Q. Do you remember being asked this question at the land office: "Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?" And that you made this answer: "From my mother's estate. About one year."

A. I don't remember that.

Q. You signed that paper, I understood you to say (showing witness paper).

A. Yes, sir.

Q. Read question number seventeen, and see whether that refreshes your recollection as to whether or not that question was asked you and whether or not you made that answer?

A. I presume I did, but I don't remember that. My mother's estate hasn't been changed any; it is

(Testimony of M. Laeta Eagleson.)

with my father's estate; it is all together.

Q. Is your mother living?

A. No, she is not living.

Q. How long has she been dead?

A. Five years, almost.

Q. Do you remember what year she died?

A. It was five years ago in January.

Q. She died then in January, 1904; is that right?

A. Yes.

Q. And she died between the time you made your entry and the time you made your final proof?

A. Yes, sir.

Q. Now did you have a bank account in Boise at that time? A. I did.

Q. Did you have a bank account anywhere else?

A. I did not.

Q. You are from Iowa? A. I am.

Q. Do you remember, on your final proof, this question being asked you: "Have you kept a bank account during the past six months, and if so, where? Jefferson Savings Bank, Jefferson, Iowa." Do you remember that?

A. No, I don't remember the question, but I did have some money there, but I had forgotten it.

Q. When did you have the money there?

A. The money was in my father's name.

Q. Then you didn't have a bank account of your own? A. Not in my own name.

Q. Did you have a bank account here in Boise in your own name? A. I did.

Q. Do you remember whether Mr. Kinkaid gave

(Testimony of M. Laeta Eagleson.)

you a check or cash for your property?

A. I don't remember which.

Q. Did you ever make more than the one deed to this property for Mr. Kinkaid?

A. I don't think so.

Q. You read this deed over before you signed it?

A. Yes, sir.

Q. Did you notice that there wasn't any date in the deed, that the deed wasn't dated?

A. No, I didn't.

Q. Do you know who prepared this deed for you?

A. No, I don't.

Q. Was the deed prepared at Mr. Kinkaid's office when you went there?

A. I can't tell you.

Q. Did you know Mr. John J. Blake at that time?

A. I did.

Q. Was he at Mr. Kinkaid's office when you went there? A. I don't think so.

Q. Did you go to his office on the occasion of acknowledging this deed?

A. I believe so.

Q. Or did he come to your house?

A. I think I went to his office.

Q. Did you know Mr. A. E. Palmer?

A. I do not.

Q. Had you ever heard of him?

A. I don't remember.

Q. And did you notice that the consideration mentioned in this deed was \$700?

A. I presume I did, at the time.

(Testimony of M. Laeta Eagleson.)

Q. I understood you to say you got \$600 or thereabouts?

A. I said I wasn't sure about the amount.

Q. What is your best recollection?

A. Between \$600 and \$700.

Q. Now, how long before you sold this claim did you know that Mr. Kinkaid was buying timber claims?

A. I didn't know it until the time I went up to his office.

Q. Did he send for you to come and see him?

A. No, my husband told me to go there.

Q. When were you twenty-one years of age, Mrs. Eagleson?

Mr. BUNDY.—That's a very leading question to ask a lady.

Mr. GORDON.—I hope you will pardon me.

A. Four years ago.

Q. What day of the month?

A. The 19th of January.

Q. What year? A. 1905.

Q. Then when you took out these papers you weren't twenty-one years old, were you?

A. I was.

Q. You took these papers out January 2, 1904, and according to your calculation you would have been—

A. I was of age when I made the final proof; I didn't make it till in March.

Q. That was March, 1904, though?

A. Well, I was of age when I made those pa-

(Testimony of M. Laeta Eagleson.)

pers.

Q. Do you remember the year in which you were born? A. Yes, sir.

Q. What year? A. 1883.

Q. The 19th of January, 1883?

A. Yes, sir.

Q. You were almost twenty-one when you filed your first papers? A. Yes, sir.

Q. You would have been twenty-one that month?

A. Yes, sir.

Q. Did you know the value of this claim when you took it up? A. I did not.

Q. Did you know the value of the timber on it?

A. I did not.

Q. Who told you to say that the estimated market value of the standing timber was \$1,200?

A. Mr. Eagleson.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of M. Laeta Eagleson, dated January 2, 1904; non-mineral affidavit of M. Laeta Eagleson, of the same date; the testimony of M. Laeta Eagleson, given on final proof, dated March 17, 1904; and the cross-examination of M. Laeta Eagleson, attached thereto, all having been identified by Mrs. M. Laeta Eagleson as having been signed by her; the notice of publication, dated January 2, 1904; the testimony of the other witnesses, given on final proof, and the cross-examination of them; the receiver's receipt, and the register's certificate, dated March 17, 1904; the deed made by Benjamin C. Eagleson and M. Laeta, hus-

(Testimony of M. Laeta Eagleson.)

band and wife, to A. E. Palmer, consideration \$700, acknowledged May 23, 1904, identified by M. Laeta Eagleson as having been signed by herself and husband; certified copy of the patent, dated December 29, 1904; all to the south half of the northeast quarter, and the northwest quarter of the southeast quarter of section 8, township 7 north of range 5 east, Boise Meridian.

(Papers marked Plaintiff's Exhibit No. 138A to 138O, inclusive.)

Q. Mrs. Eagleson, this deed that I have shown you that you said you signed, I will ask you if that is your husband's signature to that—Benjamin C. Eagleson?

A. Yes.

Cross-examination.

(By Mr. BUNDY.)

Q. You recall the time you went up to Mr. Blake's office and acknowledged this deed, do you, Mrs. Eagleson?

A. I do.

Q. Was the sale to Mr. Kinkaid made on that day?

A. I am not sure.

Q. Was it on or about that date?

A. About that day.

Q. That is, the negotiations hadn't been pending very many days prior to the time you acknowledged the deed?

A. No.

Q. The matter of making this sale to Mr. Kinkaid was negotiated by your husband, was it?

A. Yes, sir.

Q. And the preliminaries relative to making your entry were negotiated largely by him?

(Testimony of M. Laeta Eagleson.)

A. They were.

Q. At the time you made this final proof, your mother had died, and she did leave an estate?

A. She left some property, but there was no will left.

Q. So that at that time your father had in his possession not only his own, but the estate of your mother? A. He did.

Q. And when he sent you the money I suppose you don't know where he got it?

A. I don't know.

Q. Mrs. Eagleson, at the time you made this timber and stone entry and filed your first papers in the land office, had you at that time entered into any kind of contract or agreement, in writing or oral, express or implied, with any person, firm, or corporation, by which you had agreed to turn over to such person, firm, or corporation or anyone else, the title which you might acquire from the United States? A. I had not.

Q. Had you entered into any such agreement at the time you made your final proof?

A. I had not.

Q. Had you at any time prior to the sale of this property entered into any kind of agreement, with any person, by which any person had acquired any right, title, or interest in, or lien upon, the land you acquired from the United States?

A. No.

Q. It is charged in this complaint, Mrs. Eagleson, that you entered this land for the benefit of

(Testimony of M. Laeta Eagleson.)

the defendants, the Barber Lumber Company, A. E. Palmer, H. S. Rand, and the others, and at their request. Is that true or is it false?

A. I did not.

Q. And it is charged in this complaint that you made such entry under an agreement, by which you were to make the entry and then, for them and at their request, go to the land office, and at their solicitation testify to what you knew to be false, for the purpose of defrauding the United States. Is that true or false? A. It is false.

Q. Mrs. Eagleson, was your claim 120 acres or 160? A. It was 120.

(Witness excused.)

Here an adjournment was taken until two o'clock, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of George P. Wheeler, on Behalf of the Complainant.]

GEORGE P. WHEELER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. What is your occupation, Mr. Wheeler?

A. I am a newspaper writer.

Q. And where do you reside?

A. Portland, Oregon.

Q. How long have you resided there?

(Testimony of George P. Wheeler.)

A. About four years; my wife has been there eight years.

Q. Where did you live in July, 1902?

A. Well, I came up from San Francisco and stopped a few days in Portland, and then came on up here with the Republican State Central Committee, as manager of their press bureau.

Q. Did you know John I. Wells at that time?

A. No, sir.

Q. Did you know Louis M. Pritchard at that time? A. No, sir.

Q. Did you know John Kinkaid at that time?

A. Yes, sir.

Q. Did you ever have any conversation with Mr. Kinkaid about taking up a timber claim?

A. Yes, sir.

Q. State where and what that conversation was.

Mr. BUNDY.—We object to that as incompetent, irrelevant, and immaterial, calling for some conversation without specifying time or place, and for the further reason that this witness is not an entryman, and there is no charge made in the complaint that the defendants, or any of them, acquired any land through him.

Mr. GORDON.—State where, and when, and what the conversation was.

A. The conversation took place in the lobby of the Perkins Hotel, in Portland, about the last of July, or the first days of August.

Q. What year? A. 1902.

Q. State what happened in the Perkins Hotel

(Testimony of George P. Wheeler.)

on the occasion that you refer to.

A. He asked me, he said, "George, don't you want to make \$300, and don't your wife want to make \$300?" And I said, "Certainly." He said, he asked me if I didn't want to make \$300 myself and if my wife didn't want to make \$300, and I said, "Certainly"; and then he told me about locating timber lands in the Boise Basin; and I was already under contract with the Republican State Central Committee, and I couldn't go, and my wife, of course, being an employee of the postoffice, couldn't go.

Q. What were you to do to make this \$300?

Mr. BUNDY.—We object as incompetent, irrelevant, and immaterial, and calling for a conclusion.

A. File on it.

Q. What were you to do with the timber claim when you filed on it?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

Mr. GORDON.—What were you to do with the timber claim when you filed on it?

A. I was to sell it.

Q. Who to? A. To him, I suppose.

Q. Who is "him"?

A. John Kinkaid, I suppose, Senator Kinkaid.

Mr. FRASER.—I move to strike that out as calling for a conclusion. State the facts.

Mr. BUNDY.—I tried to interpose an objection

(Testimony of George P. Wheeler.)

to this evidence before the witness answered, but the last answers were made before I could get in an objection, and I now ask that it be struck out.

The EXAMINER.—Just go along with the examination quietly and slowly so that the objections can be made at the time they desire to make them and have them entered.

Mr. GORDON.—You didn't take up a timber claim? A. No, sir.

Q. Why not?

A. Because I was under contract with the Republican State Central Committee for that campaign.

Mr. FRASER.—Where?

A. Here in Boise, under Chairman Gooding.

Mr. GORDON.—Who was Chairman Gooding—Frank Gooding, the ex-governor? A. Yes, sir.

Q. Did you intend, at the time you had the talk with Mr. Kinkaid, to take up a claim?

Mr. FRASER.—We object to that as incompetent, irrelevant, and immaterial, and calling for the intent of the witness, and not stating any facts.

Mr. GORDON.—Answer the question please.

A. No, because I knew I couldn't possibly do the two things at one time.

Q. Did you ever see Mr. Kinkaid with reference to this matter afterwards? A. No, sir.

Cross-examination.

(By Mr. BUNDY.)

Q. What is your present occupation, Mr. Whee-

(Testimony of George P. Wheeler.)

ler? A. Newspaper writer.

Q. Who are you working for at present?

A. I am working getting out what is called the Idaho Blue Book, by Shields and Lewis, have been for the last month and a half.

Q. Where are you located in this work?

A. Here at Boise.

Q. How long have you been under subpoena in this case? A. I think since the 15th.

Q. Of January?

A. Oh, no, of this past month, February.

Q. Who was the first person that you told about this conversation you had with Kinkaid?

A. I think it was Mr. Clyne, in Portland, when the subpoena was served upon him a year ago.

Q. Mr. Clyne is the man that testified here in this case a few days ago? A. Yes, sir.

Q. Harry L. Clyne? A. Yes, sir.

Q. He has been working for the Government in this case around here, has he?

A. That I don't know.

Q. Did he say to you that he was assisting these gentlemen in getting these witnesses?

A. No, he didn't say that. I will tell you how he happened to know about the conversation between Kinkaid and myself; I was in his room when he got the subpoena in this case, and I said, "I come pretty near getting tangled up in that case myself."

Q. Have you finished your answer?

A. Yes, sir.

Q. And that was some time about a year ago?

(Testimony of George P. Wheeler.)

A. It seems to me it was a year ago last September.

Q. During the Borah trial, was it?

A. Yes, sir.

Q. And did you tell Mr. Clyne to report that to the Government? A. I certainly did not.

Q. Do you know whether he did report it?

A. No, I don't know.

Q. Who did you next talk with?

A. I think it was Mr. Watt.

Q. And when was that?

A. That was a week before the subpoena was served on me by Mr. Beemer.

Q. Where was the subpoena served upon you?

A. Here in the city, at my desk.

Q. And that was only a week or so before you were subpoenaed? A. Yes, sir.

Q. Some time about the first of February?

A. No, it was later than that.

Q. Between the 1st and the 15th?

A. Yes, sir.

Q. How long had you known Kinkaid at the time you had this conversation with him?

A. Oh, I had known him a number of years; I first knew him when he was senator from Boise county.

Q. He was state senator?

A. State senator.

Q. And at the time you had this conversation where were you living?

A. In Portland, but I had been down, under-

(Testimony of George P. Wheeler.)

stand, for six months, editing a paper in San Francisco.

Q. You had been at San Francisco?

A. Yes.

Q. Had you been here at all?

A. I was city editor of the "Capital News"; then I went to San Francisco, with an understanding with Chairman Gooding that if he wanted me he would let me know.

Q. Prior to the time you had this conversation with Kinkaid had you been here in Boise recently?

A. Yes, sir.

Q. How long before?

A. About seven months.

Q. So for seven months you hadn't been here?

A. No.

Q. When was it that you had the conversation?

A. The last of July or the first of August.

Q. 1902? A. 1902.

Q. Did you suggest the matter to Kinkaid or did he suggest it to you?

A. He suggested it to me, because I knew nothing about it.

Q. State, not what your version of it is, but just state what Kinkaid said to you first.

A. He wanted to know if I didn't want to make \$300, and if my wife didn't want to make \$300, and I said, "Certainly."

Q. And what did he say?

A. He said to locate timber lands in Boise county.

(Testimony of George P. Wheeler.)

Q. Did you ask him how to do that?

A. No, I didn't, but that is certainly what he said.

Q. He simply said, "Do you want to make \$300 and your wife \$300," and you said, "Yes."

A. Yes, sir.

Q. What did he say?

A. He said it could be done very easily.

Q. Then did you inquire how?

A. No, I don't think I did.

Q. Then he went right on talking, did he?

A. That was about all that was said.

Q. What more did he say?

A. I have said that so many times—

Q. Well, he said that it could be done very easily?

A. Yes, sir.

Q. What did he say next?

A. He wanted to know what I was doing, and I told him I was on my way to Boise to go to work for the State Central Committee, and then when I went home I mentioned the matter to my wife, and she said she couldn't go to Idaho, because she couldn't lose her position in the Portland postoffice.

Q. Then you never saw Kinkaid again about this?

A. No, I don't think I have ever seen the senator since then.

Q. So after you had this talk with your wife that concluded it?

A. Yes, sir.

Q. Have you told us all the talk you had with Kinkaid?

A. I certainly have.

Q. He met you in the lobby of the hotel casually

(Testimony of George P. Wheeler.)

or by appointment? A. Casually.

Q. And said to you, "Mr. Wheeler, do you want to make \$300, and does your wife want to make \$300?"

A. He asked me first what I was doing, and then he asked me if I wanted to make \$300 and my wife wanted to make \$300.

Q. To which you replied that you did?

A. Yes, sir.

Q. And he said that it could be done very easily?

A. Yes, sir.

Q. What else did he say?

A. It could be done very easily by locating timber claims in Boise county.

Q. Then what did you say?

A. I told him then that I couldn't do it, because I was under contract with the Republican State Central Committee.

Q. And then you went home and discussed it with your wife? A. Yes, sir.

Q. So that the conversation with Mr. Kinkaid was simply that he told you that \$300 could be made easily by locating claims in Boise county?

A. Yes, sir.

Q. And that is the substance of all he did tell you? A. That is it exactly.

Q. Didn't go into details about it? A. No.

Q. Didn't tell you how much it would cost you to get a claim?

A. No, sir. I never heard of the Barber Lumber Company for two years after that.

(Testimony of George P. Wheeler.)

Q. He didn't tell you how much it would cost you or how much you could sell it for?

A. No, he said I could make \$300.

Q. But he didn't tell you how much it would cost you, or the price? A. No, sir.

Q. He didn't tell you where it would be located, or anything of that kind?

A. No, he said in Boise county.

Q. Didn't tell you that any particular person was buying? A. No.

Q. You said you supposed you would sell it to him? A. Yes, sir.

Q. He didn't tell you that he was buying?

A. Yes, he told me he was satisfied he could handle it.

Q. When did he tell you that? You told him right off that you couldn't take one?

A. Not till I went home and talked the matter over with my wife.

Q. Then it was that he told you he thought he could handle it?

A. No, he told me he could handle it when I had the first conversation.

Q. He didn't ask you to make any agreement with him?

A. No, because it didn't go any further than that.

Q. You didn't have any idea of coming anyway to enter a timber and stone claim?

A. No, I was coming to Boise to work for the Committee.

Q. Mr. Kinkaid didn't tell you at that time that

(Testimony of George P. Wheeler.)

he was locating land for anybody, did he; didn't tell you that the Barber Lumber Company was in the market?

A. I said I never heard of the Barber Lumber Company until two years after that.

Q. Didn't tell you that any of these other defendants were locating people, did he?

A. I don't know who are the defendants in this case.

Q. Horace S. Rand. A. No.

Q. George S. Long. A. No.

Q. A. E. Palmer. A. No.

Q. James T. Barber. A. No.

Q. Sumner G. Moon. A. No.

Q. John I. Wells. A. No.

Q. Frank Steunenberg. A. No.

Q. And John Kinkaid.

A. No, except to sell. He didn't say he was going—I meant to say that he was the only one of what you call the defendants that I knew at that time.

Q. Mr. Kinkaid didn't ask you then to make any bargain with him? A. No.

Q. Didn't offer to advance any money to you?

A. No, sir.

Q. Didn't tell you anything about the details of it at all? A. No.

Q. And they have had you here since February 15th to testify to the fact that Kinkaid asked you if you wanted to enter some timber claims and you concluded you couldn't take them? A. Yes, sir.

Mr. FRASER.—You say you have been ac-

(Testimony of George P. Wheeler.)

quainted with Senator Kinkaid for a number of years?

A. Yes, sir.

Q. And this was more in the nature of friendly advice to you—

A. It was; he was very friendly with my wife and myself.

Q. You looked on this conversation as if he was giving you a pointer on which you were to make an investment?

A. I presume that is it.

Q. You didn't enter into any agreement by which you were to turn it over to him?

A. No, it never went that far.

Q. He didn't intimate that you should take up this claim and turn it over to somebody else, did he?

A. No.

Q. How long after you had this conversation with Kinkaid was it before you came to Boise City?

A. About two days; I left on the 4th of August.

Q. And then came to Boise?

A. Yes sir,

Q. Kinkaid was at Boise after you came here, wasn't he?

A. I don't remember that.

Q. Don't you know that he remained here, lived here for a number of years?

A. I can't remember that.

Q. Did he ever hunt you up after you came to Boise and approach you again on this subject?

A. No.

Q. And you never went to his office after you came here?

A. No, sir.

Q. When you had the talk with him in Portland

(Testimony of George P. Wheeler.)

you knew that he was residing in Boise?

A. No, I don't believe I did; it seems to me I had the impression at that time that he was still a resident of Boise county.

Q. You never saw him after that?

A. I don't believe.

Q. And you never took up a timber claim at all, did you? A. No, sir.

Q. And your wife never took up one, did she?

A. No, sir.

Mr. FRASER.—Counsel for the defendant move to strike out all the evidence of this witness, for the reason that the same is incompetent, irrelevant, and immaterial, and does not tend to prove any of the allegations of the bill of complaint, and the record shows that he never took up any timber claim, and he is not mentioned as a party to this action in any way.

(Witness excused.)

[Testimony of Viola S. Eagleson, on Behalf of the Complainant.]

VIOLA S. EAGLESON, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Viola S. Eagleson?

A. Yes, sir.

Q. What is your husband's name?

A. Ern G.

Q. And you are the daughter of Mrs. Margaret

(Testimony of Viola S. Eagleson.)

Scully? A. Yes, sir.

Q. Who testified here this morning?

A. Yes, sir.

Q. Do you remember the date that your mother took up her timber claim?

A. I think it was September, 1903.

Q. And did you tell her about this claim?

A. I didn't tell her about this particular claim.

Q. Did you tell her about any particular claim?

A. Yes, we had talked timber matters over a good deal.

Q. Where had you gotten your information concerning timber claims from?

A. I couldn't say in what particular way I got it; I got it in many ways; I knew several people that had taken timber claims.

Q. Who did you know of that had taken timber claims?

A. I came from North Idaho here and a great many people took up claims up there and I knew them personally.

Q. They didn't take any claims up here in the Boise Basin, or on the Crooked River, or up at Placerville?

A. No, sir.

Q. Who told you of the claims in what they term 6-4, the township in which your mother located?

A. I was in the Surveyor General's office.

Q. Were you employed in the Surveyor General's office at that time?

A. Yes, sir. There were a great many inquiries; people came in almost daily for information about the land up there from the time the surveys began

(Testimony of Viola S. Eagleson.)

to be made until the plats were filed.

Q. When were the plats filed?

A. They were filed sometime in the summer of 1903; I don't know just what month.

Q. In June, 1903, about there, wasn't it?

A. I know it was sometime in the summer.

Q. That was the plat to township 6-4?

A. Yes, sir, I think that was it.

Q. Do you know when the State made its selection in that township?

A. I don't know when it made its selection, but, as I remember, the last day for selection.

Q. They filed their plat showing the selection on the last day they had to file it?

A. I don't know when they filed it, but I know when their time expired, and I believe it was Saturday, the day my mother went up.

Q. It was Saturday, September 12th.

A. Was that the time?

Q. Yes. And until that time you didn't have any knowledge of the land the State was going to select in the township till that time?

A. No, sir, not at that time either.

Q. You knew your mother was going to locate in 6-4?

A. No, not when she went up there, I didn't know where she was going to locate.

Q. What day of the week did she start from Boise to go to Placerville?

A. I think it was on Friday.

Q. You are sure of that?

A. I am not positive of that; I think it was Fri-

(Testimony of Viola S. Eagleson.)

day. She was gone two nights and got back Sunday.

Q. Who told you that the party had been arranged to go? Where did you get your information as to what party your mother should go with?

A. I kept close watch on this land, because I was anxious for her to get a claim, and I couldn't state from just what point I got the information that the State intended to make filings in there. Then I understood that Mr. Downs was doing locating, and I went to Mr. Kinkaid—I have known him for several years, and also knew that he had been interested in some timber claims—so I went to him and asked him about it, if there was going to be any chance to get timber claims up there, and he said it was likely that the State would take everything that was very desirable, and that a person couldn't expect to get choice claims, but the State would probably leave scattering areas, and I asked him if he knew of anyone going up, and he told me that Mr. Downs was taking people up and if I wanted to see him I could stop in at the Pacific Hotel; and I asked Mr. Kinkaid about the sale of lands, and what his idea was as to the business proposition of taking one, and I asked him if he was buying, and he said he wasn't just then, but his company had been buying lands, but he didn't want to promise, he said, that he could take them, but he said there would no doubt be a market for them, and he said he believed that if a person could get a fairly good claim it would be worth the money. So I saw Mr. Downs and he

(Testimony of Viola S. Eagleson.)

told me there was a party going up next day, that he was going to locate providing there was anything left; he said those were chances they would have to take. He said they would have to pay their own expenses, but, he said, if they don't get a claim they won't have to pay the location fee; so then I told him my mother wanted to go up, and so he said that he would arrange then for a carriage with some others and she could go, so she went up the next day; I think it was Friday morning that she went up.

Q. And it was the Thursday before your mother located the following Monday that you had this talk with Downs?

A. I am quite positive it was the day before she went up.

Q. When did you have the talk with Kinkaid?

A. Thursday morning, the same day; I saw Kinkaid and Downs the same day.

Q. And you didn't go along with your mother, did you? A. No.

Q. Then your mother returned what day?

A. She returned Sunday.

Q. What time Sunday?

A. It was late in the afternoon Sunday, about four o'clock, I think.

Q. Who told you that you had better get a place in line for your mother?

A. Well, nobody told me, but I saw a Mr. Waters on the street, and I told him my mother had gone up, and I asked him if he couldn't get someone to take her place—I knew when I had been at Lewis-

(Testimony of Viola S. Eagleson.)

ton people were lined up there for two weeks, and I didn't like the idea of her going up there and having the hardship of the trip and then losing the opportunity to get a place. I asked him if he knew of anybody and he told me Mr. Chapman; I don't know his initials; he was a neighbor of ours.

Q. What was his occupation at that time?

A. I don't know what his occupation was at that time; I know he acts as bailiff and such as that quite often.

Q. Did Mr. Waters go off and get Mr. Chapman?

A. I told him I wanted to see him, and I saw him, I think Friday afternoon, and he told me he would kind of keep a watch on the place, and if there was any signs of there being any rush or line-up he would take a place for her.

Q. Was that before your mother started up there?

A. No, it was after she started, but before she came back.

Q. And Mr. Chapman said he would keep a watch? A. Yes.

Q. And didn't Mr. Chapman go into the line Saturday night?

A. I think he did; he came to me Saturday, I think, some time Saturday, I saw him on the street, and he said everything was quiet up there, but if I thought best he would go and take a place in line that evening so as to be sure.

Q. And the place Mr. Chapman held was the—

A. The place she took.

(Testimony of Viola S. Eagleson.)

Q. Which was the second place in the line?

A. I don't know; I thought it was the first.

Q. I understood your mother to say it was second.

A. I wasn't there when she filed, so I don't know, but I got the impression somewhere that it was first.

Q. What did you pay Mr. Chapman?

A. I think it was \$10.

Q. And you say you didn't go to the land office with your mother?

A. No.

Q. Do you know who did go to the land office and point out Mr. Chapman to her?

A. No, I don't. I sent her up in a hack that morning.

Q. You are sure you didn't go?

A. No, I wasn't up there.

Q. Did you tell Mr. Kinkaid that Mr. Chapman was holding a place in line for your mother?

A. No, I don't think I saw Kinkaid after Friday, after Mama went up.

Q. Did you see him again Friday?

A. No, she left Friday morning, and I didn't see him—I saw him Thursday evening after I saw Mr. Downs, and I told him she was going to go on up.

Q. Did you make any arrangements with Mr. Kinkaid to prepare the papers for your mother?

A. No.

Q. Who prepared her papers?

A. Mr. Waters prepared them.

Q. Where? A. At our house.

Q. Did you send for him to come and prepare the

(Testimony of Viola S. Eagleson.)

papers?

A. No, he dropped in Sunday; he said he would come in and see what she thought of the claim, if she decided on a location, and then he would let Chapman know whether we wanted him to stay there in line. So he came up and made out the papers; I intended to make them out myself, but I thought if he would make them out they would be sure to be all right.

Q. Then when did you see Mr. Chapman again with reference to this property?

A. I didn't see him again until two or three days, or maybe a week after, and asked him what it was worth.

Q. What did he tell you?

A. He said he had stayed up there two nights and thought it would be worth something, I think he said \$10.

Q. When did you see Mr. Kinkaid again?

A. I didn't go to see him again; I might have passed him on the street, but I didn't see him again until I think sometime in January.

Q. And did you go to see him then?

A. Yes, I went to see him to see if he wanted to buy the claim.

Q. Did he tell you he would?

A. He said he couldn't just then; he said his folks had quit handling claims just for the present, but he thought they would be again, he wasn't sure.

Q. Did you go to see him on another occasion or did he come to see you?

(Testimony of Viola S. Eagleson.)

A. No, I went to see him; I went to see Mr. Downs and asked him if he knew of anyone that was buying, and he said he didn't, but he would advise holding it, he thought it would be worth more, and I think it was February I went to see Mr. Kinkaid again; I know I went to see him two or three times, and I 'phoned him a few times.

Q. Do you remember when you finally did consummate a deal with him?

A. I don't remember the date.

Q. Do you remember what month?

A. I think it was in the early part of February.

Q. And did you go to the land office with your mother when she made her final proof?

A. I think she went up alone, and then I came up a little later to see how she was getting along, and then I went to the bank and got the money for her.

Q. Was it to your account or hers?

A. It was to my account.

Q. And you had had that money in bank some time, I assume.

A. Yes, sir.

Q. It was your own money; you hadn't borrowed it, had you?

A. No.

Q. Do you remember how much you paid in the land office that day?

A. No, I don't remember the exact amount; it was a little over \$400, I think.

Q. That is your best recollection?

A. Yes, sir.

Q. Now, was it \$400 or \$300?

A. It seems to me it was a little over \$400; my

(Testimony of Viola S. Eagleson.)

bank account would show.

Q. I guess it was \$400. Somebody here just before you testified, and I thought it was your mother, with reference to a \$300 claim. Did Mr. Kinkaid make you any offer for this property at any time until you sold it to him?

A. When I talked with him before my mother went up I asked him what they were paying for claims, in a general way, and he said they usually paid whatever scrip was worth, based on that.

Q. How much was that?

A. He had some quotations on scrip, and I think it was \$5 an acre.

Q. That was \$800 then for the quarter section?

A. Yes.

Q. So that was all the conversation you had with him about money, was it?

A. That was all as to the price that the claim should go for.

Q. You went with your mother when she sold her claim, did you? A. Yes, sir.

Q. And you went to Mr. Kinkaid's office?

A. I went there before she sold her claim, and then when he said that he was prepared to take it. I don't remember just what he paid; it seems to me it wasn't quite \$800, although it might have been just \$800, and I think I brought mother up there, and then we went some place else for her to make her acknowledgment.

Q. Did you go to John J. Blake's office?

A. I don't know; I know mother acknowledged

(Testimony of Viola S. Eagleson.)

a good many papers before Richards; it might have been Blake and it might have been Richards.

Q. You mean the clerk of the court?

A. Yes, sir.

Q. You came to the clerk's office?

A. Yes, sir.

Q. Do you remember where you paid Pat Downs his locating fee?

A. I handed it to him on the street one day; I remember that because I put the bills in an envelope and had it ready.

Q. You expected to meet him on the street?

A. I didn't know whether I would or not, because if I did meet him I didn't want to stand and talk to him any length of time; I went to the hotel one day, but he was out of town.

Q. Do you remember who prepared the deed for your mother to sign?

A. I think Mr. Kinkaid prepared it.

Q. He had it at his office when you went up there?

A. He had it ready, yes.

Cross-examination.

(By Mr. BUNDY.)

Q. What is your husband's name, Mrs. Eagleson?

A. Ern G.

Q. He didn't take a claim? A. No, sir.

Q. And what was his business in 1903?

A. He was Surveyor General.

Q. And you were in his office? A. Yes, sir.

Q. That was before your marriage?

A. Yes, sir.

(Testimony of Viola S. Eagleson.)

Q. What is his business now?

A. He is a civil engineer and mining and general surveying.

Q. You were in the office in some clerical capacity? A. Yes, sir; I was stenographer.

Q. And I suppose in that position became quite familiar with the land business?

A. Yes, sir; I was there a number of years.

Q. And you testified that there was a great many inquiries there with reference to land that was about to be entered. A. Yes, sir.

Q. What was known as the Boise Basin lands were opened for entry first, were they not, that is, before the 6-4, or Crooked River?

A. I don't remember the order.

Q. You don't remember the order in which these tracts were opened?

A. No, but I remember that these in 6-4 were considered good timber lands.

Q. The State filed their selections on Saturday, the 12th, and your mother filed on Monday, the 14th?

A. Yes, sir.

Q. At the time your mother went up there, on Friday, which was the day before the State made its selection, did you know what lands the State was going to select? A. No, sir.

Q. Was there any way of knowing whether your mother's land would be on lands the State was taking up?

A. No, sir; there wasn't any way of knowing.

Q. What was your idea?

(Testimony of Viola S. Eagleson.)

A. I just thought she would go up there and take the chances; if the State left anything that was worth taking, she could locate that; of course we had to depend quite a good deal on the judgment of the locator as to the lands.

Q. Now it seems that you were responsible for this line-up that caused so much trouble. That was based on some experience you had had up at Lewiston?

A. Yes, sir; I saw them line up there, and I heard a good deal of the difficulty they had had there in making locations. It seems that they had had a good deal of experience with scrip people getting in when the settlers wanted to make filings.

Q. So you thought that, as a precautionary measure, you would have someone there in line to keep her place for her?

A. Yes, sir.

Q. And arranged to have Mr. Chapman there to hold your mother's place?

A. Yes, sir.

Q. That was the beginning of the line, I suppose.

A. Yes, sir.

Q. Your mother had, some time before this, sold her home up in Moscow?

A. Yes, sir.

Q. Were her funds in your keeping?

A. Yes, sir; I always took care of it for her, kept it invested or loaned out for her.

Q. She testified this morning that the money she used was the proceeds of her Moscow home.

A. Yes, sir; I was taking care of it for her.

Q. But at that time it was in your keeping?

A. Yes, sir.

(Testimony of Viola S. Eagleson.)

Q. So that the money you got for your mother was not a loan to her, but a payment of what was already hers. A. It was her own money.

(Witness excused.)

[Testimony of Arthur Anderson, on Behalf of the Complainant.]

ARTHUR ANDERSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mr. Anderson?

A. Boise Basin, Pioneerville.

Q. How long have you resided at Pioneerville?

A. Forty-three years.

Q. Do you remember of taking up a claim under the Timber and Stone Act in 1901?

A. Yes, sir.

Q. What is your age, Mr. Anderson?

A. Seventy-three years.

Q. And what is your occupation?

A. Miner.

Q. Have you your glasses, Mr. Anderson?

A. Yes, but I can't read writing.

Q. I will ask you if you went to the land office and filed an entry under the Timber and Stone Act, September 24, 1901? A. Yes.

Mr. BUNDY.—The defendants object to that as incompetent, irrelevant, and immaterial, and for the reason and upon the ground that there is no charge

(Testimony of Arthur Anderson.)

in the complaint in this action that the defendants or any of them acquired any land by or through Mr. Anderson, or through any entry Mr. Anderson made.

Mr. GORDON.—Q. And I will ask you if you signed your name by a mark? A. Yes, sir.

Q. And do you know who signed your name to that paper? A. No, I don't remember.

Q. Was it Mr. Garrett? A. I think it was.

Q. And was Mr. Nugent present at the time, Mr. Albert P. Nugent?

A. No, I don't think he was; I am not positive of it.

Q. Mr. Anderson, who first spoke with you about taking up a timber claim? A. John I. Wells.

Q. Did you ever make more than the one application under the Timber and Stone Act?

A. No, sir.

Q. Only the one claim that you took up?

A. Yes, sir.

Q. Was this conversation you had with Mr. Wells before you filed your papers? A. Yes, sir.

Q. What did Mr. Wells say to you about it?

A. Well, he said—well, he wanted me to take up a claim.

Q. Why was he interested in you taking up a claim?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. Because he wanted to show me the claim.

Q. State what he told you about it.

A. That is all he told me; he told me I would have

(Testimony of Arthur Anderson.)

to go to Boise to file on it.

Q. Did he tell you what you could do with the claim? A. No.

Q. Did he tell you how much it would cost you?

A. No, not at that time; no, sir.

Q. When did he tell you how much it would cost you?

A. Well, I don't remember; well, I ain't positive; I think he told me what it would cost me to go down there and file on it.

Q. Where was this conversation had that you refer to, with Mr. Wells? A. Centerville.

Q. And he came to see you about it?

A. Well, I passed through there every day; I see Wells every day there.

Q. And did he tell you he would charge you a locating fee? A. Yes, sir.

Q. How much was that to be?

A. He charged me \$25, but he only got \$20 of me.

Q. When did you pay him that?

A. I don't remember whether it was before I went to Boise City or after I came back.

Q. Do you remember whether it was before you sold the property? A. Oh, yes.

Mr. BUNDY.—He never sold any property.

The WITNESS.—I never sold any.

Mr. GORDON.—Q. Did he give you a description of the claim? Did he give you the numbers?

A. Yes, sir.

Q. And where did you take the numbers?

A. Well, close to where I am living, so he didn't

(Testimony of Arthur Anderson.)

have much trouble to show it to me.

Q. Did you come to Boise alone, or did you come with someone?

A. No; me and three others hired a team.

Q. Well, what did you do, and who were the three?

A. Well, there was Albert Nugent, and a man by the name of Frank Goldtrap, and William Carl.

Q. Did you see Mr. John I. Wells before you started from Pioneerville?

A. No, sir; we started early in the morning; I did not see him.

Q. Did you see him the night before?

A. Well, I ain't positive about that; I think so, though.

Q. What was he doing at that time?

A. Well, I can't say what he was doing; I think he was tending to the saloon for his brother.

Q. What was his brother's name?

A. Albert Wells, or Harvey, they call him, I believe.

Q. Well, did you ever have any talk with Mr. Wells about selling your claim?

A. No, sir. I had some talk with him, but that was quite a while before proving up on it.

Q. Well, what was the talk?

A. Well, I don't remember exactly. He said—oh, I don't remember exactly what he did say about it, but he said, "It will be pretty soon time for you to prove up."

Q. And what did you say to him?

(Testimony of Arthur Anderson.)

A. Well, I don't remember saying anything to him any further than "I will be a little short of money to prove up with."

Q. And what did he say?

A. Well, he said, "You can get money from any bank to prove up on."

Q. Did you get money from a bank?

A. No, sir.

Q. Where did you get the money?

A. Well, I had some money and I got some from Wells.

Q. How much did you get from Wells?

A. I think I got \$250.

Q. Is that the John I. Wells who is now present here in court? A. Yes, sir.

Q. Now, where did you get that money, where was he when you got it?

A. I got it down at the Pacific Hotel.

Q. Did he write for you to come in?

A. No, sir; notified from the land office that it was time to prove up.

Q. And you went to the Pacific Hotel, as I understand you, to see Mr. Wells? A. Yes, sir.

Q. And did you go to Mr. Wells' room?

A. No, I met him on the street and he took me to his room.

Q. Who was with you then?

A. Albert Nugent.

Q. Was there anybody else besides you and Nugent? A. No, sir.

Q. Do you know whether he gave you \$400 or just

(Testimony of Arthur Anderson.)

\$250? A. Well, he give me \$400.

Q. And you took that \$400 to the land office and paid it in? A. Yes, sir.

Q. And they gave you a receipt for it, did they?

A. Yes, sir.

Q. Then where did you take the receipt?

A. I took the receipt to John Kinkaid.

Q. Who told you to take it to John Kinkaid?

A. Well, John I. Wells told me to follow Nugent; Nugent proved up the same time as I did, was one of my witnesses.

Q. And did he get \$400 from Wells the same day you did?

A. I ain't sure of it, because I didn't see him, but I think he went there to get it.

Q. Before you got your money to prove up, you came down to Boise two or three days before that?

A. Yes, sir, three days before that, I think it was.

Q. And did you see Wells when you first came, on that occasion?

A. Yes, I think I saw him the day after I came down.

Q. Did you ask him anything about money to make proof with? A. Yes, I think I did.

Q. What did he tell you?

A. He says, "I ain't got the money here," he says, "but I will get it for you."

Q. Did he say anything about the money hadn't come?

A. Well, I don't remember that that was the con-

(Testimony of Arthur Anderson.)

versation.

Q. And you went to John Kinkaid's office the day you made final proof with your receipt, as I understand? A. Yes, sir.

Q. And did you get any money from Mr. Kinkaid's office that day? A. Yes.

Q. How much?

A. I think I got \$137.50.

Q. What did he give you the \$137.50 for?

A. Well, for to make up for what I was going to have.

Q. And how much were you going to have?

A. \$650.

Q. And when were you to get the rest of it?

A. When I got the title to the land.

Q. And was he to notify you when to come back?

A. I don't remember if he was or not.

Q. Did you ever get any more money from him?

A. No, sir.

Q. Then after you got that money you went back home, did you? A. Yes, sir.

Q. As I understood you to say, you went up to Kinkaid's office with Albert Nugent?

A. Yes, sir.

Q. And did Kinkaid know what you came for?

A. Yes, sir.

Q. Did you have to tell him what you came for, or did you give him the paper and he knew?

A. Well, I followed Albert Nugent, and he done the same thing, and so I, of course, got him to sign my name to it.

(Testimony of Arthur Anderson.)

Q. Then the claim was held up in the land office for some time? A. Yes, sir.

Q. And later you were sent for to come down here. Who sent for you?

A. Well, I have forgot how I was notified; I was notified to come down to the land office, that they were going to have a hearing there.

Q. Do you know who notified you?

A. I don't remember; I think it come through Norman Young.

Q. He was running a store up there at that time?

A. Yes, sir.

Q. And did he give you a paper for you to sign, authorizing somebody to act as your attorney?

A. Yes, it was quite a while before that.

Q. Who was the man that was authorized to act as your attorney?

A. I have forgot his name.

Q. Was it Mr. Worthman? A. Yes.

Q. Do you remember his first name?

A. Harry Worthman.

Q. Now do you know who sent Mr. Young to you?

A. I don't remember; I think it was John I. Wells; there was three or four men coming down at the same time.

Q. Who came with you at that time? Mr. Goldtrap? A. No, sir.

Q. Mr. Nugent?

A. Hunter; Mr. Nugent was living down here.

Q. Was that the gentlemen who is named Edward Abel Hunter? A. Yes, sir.

(Testimony of Arthur Anderson.)

Q. Was Mr. Harvey Wells with that party?

A. No, sir, there was only us two and a man by the name of Frank Cooper.

Q. Did Mr. Ball come down at that time?

A. He was down before me.

Q. Now who did you go to see when you came here?

A. I don't remember going to see anybody; I was notified to come to the land office.

Q. Did you go to the land office?

A. Yes, went to the land office next morning.

Q. Did you see Mr. Wells before you went to the land office? A. I think I did.

Q. And were your expenses paid while you were down here? A. Partly.

Q. Who paid them? A. John I. Wells.

Q. How much did he give you for your expenses while you were down here?

A. I don't remember exactly now, but I think it was eighty odd dollars, or something like that; I ain't positive how much it was now.

Q. How many times were you down here with reference to the matter before the land office that was appealed?

A. Only that one time.

Q. And how long did you remain on that occasion?

A. I think a little over four weeks.

Q. How much more money were you to receive when you got title to your land, do you remember?

A. I think it was something over \$100.

(Testimony of Arthur Anderson.)

Q. Did they tell you why they only gave you \$137.50?

A. Yes, they told me when I got the title to it they would give me the balance.

Q. Was anything said to you at any time, either by Wells or Kinkaid, to the effect that you were to have \$250 for your claim? A. No, sir.

Q. Well, you say you got \$137.50?

A. Yes, sir.

Q. And were to get \$100 and some over?

A. Yes, sir.

Q. Did you understand that was what was to be given you? A. Yes, sir.

Q. Who gave you that understanding?

A. John I. Wells.

Q. And how did he express it, what did he say about it?

A. I don't remember exactly, but I think he came to me shortly before we proved up, and he said that was all he could afford to give us, \$650.

Q. Did you go to see Mr. Frank Martin about this hearing in the land office?

A. Oh, just to go into his office once in awhile.

Q. And who told you to go in there?

A. Well, he was conducting the case in the land office.

Q. Did you pay him anything for conducting the case? A. No, sir.

Q. Did you have any agreement to pay him anything for conducting the case?

A. No, sir.

(Testimony of Arthur Anderson.)

Q. Do you know who employed him for you?

A. I can't say.

Q. Did he ever ask you for any money for it?

A. No, sir.

Q. Did you employ Mr. Harry Worthman?

A. No, sir.

Q. Do you know who employed him for you?

A. Well, I got a letter once to ask me if I was satisfied.

Q. Who did that letter come from?

A. I think it come from John I. Wells.

Q. Satisfied to have Worthman act as your attorney? A. Yes, sir.

Q. Was that the first that you knew there was anything wrong in the land office, through that letter?

A. No, I had no idea there was anything wrong until I come down here and was before the land office.

Q. Now when you went to see Mr. Martin did he talk to you about this case?

A. Oh, there was very little said about it.

Q. What did he say about it?

A. Well, I don't remember; occasionally I would go in there; I don't remember exactly what we did say, because I didn't have much conversation with him.

Q. Do you remember anything he said to you about your testimony in this case?

A. No, I don't remember what we did say, or what he had to say to me.

(Testimony of Arthur Anderson.)

Q. Did you want to throw the case up?

A. No, not then, not that I know of.

Q. Did you at any time want to give the case up? A. No, not to my knowledge.

Q. Do you remember whether on one of the occasions you went to Mr. Martin's office, did he tell you that you had taken up the land and you would have to stay with it?

A. Yes, I think he did.

Q. Did you have any talk with Mr. John I. Wells as to what your testimony was to be?

A. No, not as I remember, not what my testimony was going to be.

Q. Did he tell you certain questions that would be asked you? A. Yes, I think he did.

Q. Did he tell you how to answer them?

A. No, I don't remember exactly whether he did or not.

Q. Do you remember Mr. Louis L. Sharp, the special agent of the land office?

A. Yes, sir.

Q. Do you remember Mr. Sharp coming to see you with reference to this claim?

A. Yes, sir.

Q. And do you remember making an affidavit that he prepared for you?

A. Well, I remember something about it.

Q. Do you remember where the conversation you had with Mr. Sharp took place?

A. I think it was in Pioneer.

Q. Whereabouts in Pioneer?

(Testimony of Arthur Anderson.)

A. Well, a kind of a saloon.

Q. Whose saloon was it?

A. Joe Poncia's.

Q. Did Mr. Poncia keep a saloon or a hotel?

A. Well, he kept both.

Q. Do you remember whether Miss Maud Claunder was there at that time?

A. I think she was.

Q. And Miss Maria C. Poncia?

A. Yes, sir, I think, of course, she was there.

Q. Do you remember whether they were witnesses at the time you made the statement to Mr. Sharp?

A. Yes, sir; I was considerably under the influence of liquor at that time.

Q. You were? A. Yes, sir.

Q. Why, I didn't know that you drank?

A. Me and Mr. Sharp drank a good deal that night.

Q. You did. Well, I will read this affidavit and ask you if you made these statements contained herein to Mr. Sharp.

Mr. BUNDY.—If this is offered for the purpose of impeaching Mr. Anderson, I object to it.

Mr. GORDON.—We are not offering it for that purpose. If he says he don't know anything about it, all right. Can you read this affidavit?

A. No, sir, I can't read writing.

Q. Can you recognize your mark made to that paper? A. I think so, yes, sir.

Q. You remember signing a paper?

(Testimony of Arthur Anderson.)

A. I remember signing something there, yes, sir.

Q. "I, Arthur Anderson, being first duly sworn, upon oath, say, my residence and postoffice address is Pioneerville, Idaho. I have been a resident of Boise County since the year 1865. My age is sixty-six years. On September 24, 1901, I made a T. & S. application No. 226, for the east half of the northwest quarter, and the west half of the northeast quarter of section 15, township 7 north of range 5 east, Boise Meridian. I submitted proof on this application December 10, 1901. Prior to the date on which I made application to purchase this land I paid John Wells, of Boise, Idaho, \$20.00 for locating me on this land. There was an implied agreement between the said John Wells and myself that I was to make a transfer of the land to him or his company that he was representing as soon as I received patent. This agreement was made prior to the time I submitted proof on said application. From the following conversation with Bert Nugent, Idaho City, Idaho, and John Wells, Boise, Idaho, I received the understanding that I was to receive \$237.50 for my right of entry. The conversation with Nugent was to the effect that we were to receive \$237 clear for our right of entry. I supposed he had been talking with John Wells and received the information from him; and the conversation with Wells was to the effect, I told Wells that I thought \$237 we were to receive for our right of entry was too small, and I did not want to make proof for that amount. He replied that it was all

(Testimony of Arthur Anderson.)

he could give and if such was the case he would have to refund the \$20 I paid him for locating me. At the time of submission of proof I received \$200 from said Wells to make payment for said land to the United States Government. The balance I paid out of my own money. I have received \$137.50 of the \$237.50 I was to receive clear of my right of entry, the balance \$100 I am to receive from John Wells or the company he represents as soon as I receive patent to the above-described land. I received the \$137 from John Wells, the party who seemed to be engineering the scheme. Patrick Downs informed me about one week ago that several parties had received patents and he thought I would receive mine too." Did you make those statements?

A. Not all of it; there was a good deal there that I never made no statement of.

Q. You say that the evening that you and Mr. Sharp were discussing this matter you were considerably under the influence of liquor?

A. Yes, sir.

Q. Well, were you in such a condition that you didn't know what you were doing?

A. Part of the time.

Q. Did you know what you were saying?

A. Well, if Mr. Sharp has put so much as that down there, there is a good deal that I didn't say, I am pretty sure of that.

Q. How do you know whether you said it or not?

(Testimony of Arthur Anderson.)

A. Well, I can remember some in there that—well, of course, the latter part of it there both of us got pretty bad under the influence of liquor.

Q. Did Mr. Sharp write that that evening?

A. Yes, sir; he was six hours about it, I think.

Mr. BUNDY.—Who bought the booze, Mr. Anderson? A. Why, me and Sharp both.

Mr. GORDON.—Q. You held your end up, didn't you?

A. Yes, I did. Mr. Sharp had a bad cold; he asked me what was good for it, and I told him to drink plenty of hot whiskey and it would cure it.

Q. Then you got Sharp drunk, instead of him getting you drunk, is that right?

A. Well, we both got about the same.

Q. I mean, you are the one that suggested taking a drink? A. Yes, sir.

Q. Now, I understood you to say in your examination in chief that you got a little over \$400 from John Wells to make your final proof?

A. Yes, sir.

Q. And you didn't get it till the afternoon of the day you made your proof?

A. No, it was before noon, because I proved up before noon.

Q. And you had been to Mr. Wells' office that morning?

A. Yes, sir, about eleven o'clock.

Q. Did you go there another time that morning and he said he didn't have the money?

A. No, sir, not that morning.

(Testimony of Arthur Anderson.)

Q. It was the day before?

A. Well, a day or two before, I don't remember.

Q. Was the \$400 that Wells gave you in a check or in cash? A. It was in cash.

Q. And you took that same money that he gave you and paid that into the land office?

A. Yes, sir.

Q. Well, did he tell you where to say you got that money? A. Yes, I believe he did.

Q. What did he say?

A. He told me to say it was my own.

Q. Did he tell you how long you should tell that you had had that money? A. No, sir.

Q. Did he tell you to say how you had made it?

A. Well, no, I think I made that up myself.

Q. You made that up yourself, did you?

A. Yes, because I had made a good deal of money that fall, but didn't take care of it.

Q. You and Sharp had spent it?

A. Oh, no.

Q. Then this answer that you made at the land office in response to the inquiry as to where you received the money you paid in the land office and how long you had had it in your actual possession wasn't exactly true? A. No, sir.

Q. Do you remember that answer: "From my mining operations this summer. About the 10th of November I cleaned up a claim and came to Boise and disposed of the gold-dust." That isn't where you got the money?

A. That is true; that part of it is true.

(Testimony of Arthur Anderson.)

Q. You cleaned up a claim all right?

A. Yes, sir, and brought the money down here, and I had \$1,200.

Q. Didn't you spend it while you were here?

A. No, I had a good deal of hired help, and I paid them off and I had probably between four and five hundred left of it when I got through.

Q. But the money you paid in the land office was the money you got from John I. Wells?

A. Yes, sir.

Q. The decision of the land office was against you? A. Yes, sir.

Q. And you subsequently relinquished your claim? A. Yes, sir.

Q. Do you know to whom you relinquished it?

A. No, I understood the Government was going to take it.

Q. You signed some papers to that effect, didn't you? A. I think I did.

Q. Did Mr. Young present the papers to you?

A. No, sir, I think it was Frank Martin; he was up there.

Q. Frank Martin came up to see you?

A. Not me alone; he come up there, I don't know what for.

Q. And you relinquished to him then, did you?

A. Yes, sir.

Q. He didn't say anything to you about an attorney's fee at that time, did he? A. No, sir.

Q. Never did ask you for an attorney's fee, did he? A. No, sir.

(Testimony of Arthur Anderson.)

Mr. KEIGWIN.—Q. Mr. Anderson, how far did you live from the land which you entered?

A. Oh, a short distance, probably five or six hundred feet from one corner of it.

Q. How long had you lived that near to it?

A. Since '77, up to the present time.

Q. You knew the land very well then?

A. Yes, sir.

Q. Mr. Anderson did you tell Mr. Nugent, Albert P. Nugent, that you had any understanding with John I. Wells that you were to make this entry and let him have the land and get so much money for it? A. No, sir.

Q. You never said anything of that kind to Mr. Nugent, did you? A. No, sir.

Q. Do you remember that as you were going home from making your final proof you met your friend, Mr. H. F. Cooper? A. Yes, sir.

Q. You know Mr. Cooper? A. Oh, yes.

Q. Do you remember where you met him?

A. I think I met him in Idaho City.

Q. On your way home from the land office?

A. On my way home, yes.

Q. Do you remember that Mr. Cooper asked you for some advice as to whether he should take up a claim or not?

A. I don't remember, but I think he did.

Q. Well, he consulted you about the taking up of a claim, did he? A. Partly, yes.

Q. Do you remember what you advised him?

A. I don't remember exactly what I did say to

(Testimony of Arthur Anderson.)

him; I thought I told him not to have anything to do with it.

Q. That was the advice you gave him?

A. Yes, sir.

Q. Do you remember what reason you gave to Mr. Cooper for not having anything to do with it?

A. No, I don't remember that.

Q. Why shouldn't Mr. Cooper take up a claim?

A. Well, because I thought there wasn't much in it.

Q. You expected to make something out of it, didn't you?

A. Well, I didn't understand it thoroughly when I took up my claim; if I had I wouldn't have had nothing to do with it.

Q. Why not?

A. Because it took a good deal to drive up and down, and, taking everything into consideration, I wouldn't have done it.

Q. Didn't you make some money out of it?

A. No, sir; it cost me a good deal more than ever I made out of it.

Q. Was that the reason you gave to Mr. Cooper for advising him not to take up a claim?

A. I don't know exactly the reason.

Q. Now, Mr. Anderson, didn't you tell Mr. Cooper that he had better not take up a claim, because in order to get through you had to lie?

A. I don't think I did.

Q. Didn't you say to him that if you had to do it over again you would not do it, because it was

(Testimony of Arthur Anderson.)

necessary to lie straight through?

A. I don't remember that I did.

Q. Do you remember that you did not?

A. No, I don't remember that either.

Q. It is possible then that you did say something like that, is it?

A. Very likely; I couldn't say, because when I met Mr. Cooper I just come back from Boise, and I had been here a week or ten days.

Q. It is possible you did tell him that if you had to do it over again you wouldn't do it, because you didn't like to lie so much? A. Yes, sir.

Q. Do you remember talking to Mr. Poncia and Mr. Nelson Bottcher about taking up your claim?

A. I can't remember that, because there was only one time we had some conversation about it, and I don't remember what I did say.

Q. These gentlemen were old friends of yours?

A. Poncia was and is, and this other man, he was a friend of mine then, but he is no friend of mine.

Q. They lived at Pioneerville at that time?

A. Yes, sir.

Q. And do you remember telling them that you had taken up this claim?

A. Yes, they knew before.

Q. Do you remember saying to them that you had taken it up under an agreement that you were to let him have it or sell it to the people whom he represented?

A. No, I don't remember saying that.

(Testimony of Arthur Anderson.)

Q. Would you say that you didn't say that to either of those gentlemen?

A. That I can't, I won't say positive either one way or the other.

Q. Do you remember that on coming back to Pioneerville in December, 1901, directly after you had made your proof, you met Mr. C. R. Poncia and Mr. Nelson Bottcher at Pioneerville?

A. No, sir, it was a long time after.

Q. How long after?

A. Well, December I think I proved up, and I didn't meet them before Christmas.

Q. Well, it was shortly before Christmas then?

A. Well, about Christmas, a day or two before Christmas.

Q. And do you remember having a conversation with them about your entry?

A. No, sir, not them together.

Q. Do you remember talking to each of them separately?

A. I remember I had some conversation with Bottcher; he was doing the assessment work in a claim; it was about Christmas time and I was pretty well under the influence of liquor then, all three of us there; he wanted to know something about it, and I probably let out something; I don't remember what I did say.

Q. You told him the truth, I suppose.

A. Most likely.

Q. That is, you intended to tell the truth?

A. Yes, I think so.

(Testimony of Arthur Anderson.)

Q. Then you can't say whether you did or did not state to these gentlemen, or either of them, that you had made this entry in pursuance of an understanding with Mr. Wells that you were to sell the land to him, Wells, and get so much money for your right of entry?

A. Not when I made the entry, because I never had made no agreement with Wells.

Q. My question is, do you remember whether or not you said to either of those gentlemen that you had made such an agreement?

A. Oh, that I can't say, whether I did or not.

Q. You say that Mr. Bottcher wanted you to do some assessment work for him?

A. No, sir, we was working for one man, both of us.

Q. Who was that man?

A. His name was Glass.

Q. Thaddeus Glass?

A. I have forgot his name.

Q. What were you doing for Mr. Glass?

A. Well, we was doing the assessment work, doing \$100 worth of work for him.

Q. Were you working by the day? A. Yes.

Q. How much did he pay you?

A. He gave us \$3 a day and our board.

Q. Were you employed that way throughout the year?

A. No, I was only employed that way for ten days.

Q. What did you do the rest of the year?

(Testimony of Arthur Anderson.)

A. In the winter time I ain't doing much; in the summer time, of course, I work.

Q. What do you work at?

A. Well, mining; I was running a water ditch there; I was tending it for wages ten years, and another ten I had a lease on it.

Mr. GORDON.—I show you, Mr. Anderson—

Mr. BUNDY.—You needn't identify them. We will stipulate that they are the files of the land office.

Mr. GORDON.—It is stipulated that the timber and stone land sworn statement, dated September 24, 1901, of Arthur Anderson, was signed and filed by him; the affidavit, dated December 10, 1901, also signed and filed by Arthur Anderson; the testimony of Arthur Anderson, given on final proof, dated December 10, 1901, and the cross-examination thereof; also the affidavit signed by Arthur Anderson, and sworn to before Louis L. Sharp, May 18, 1902.

(Papers marked Plaintiff's Exhibit No. 139A to 139E, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Anderson, I suppose you have heard about this entry of yours a good many times.

A. Yes, sir, I have.

Q. How many grand juries have you been before?

A. Two.

Q. And how many times have you met Mr. Ruick up in his little office and talked it over with him?

A. No.

Q. And with his assistant, Mr. Johnson.

(Testimony of Arthur Anderson.)

A. Once with him.

Q. And how many times have you been upstairs in the little room during the two weeks you have been here?

A. I ain't been no time.

Q. They had you Saturday, didn't they?

A. Yes.

Q. And is that the first time they have had you up on this visit?

A. Yes, sir.

Q. And you testified in the Borah trial.

A. Yes, sir.

Q. And they had you in the room talking to you before the Borah trial?

A. No.

Q. Didn't Judge Burch have you in there?

A. No, sir.

Q. You got away?

A. Yes, sir.

Q. And you have been before two juries and one trial, besides this one, and been in what we call the sweat-box three or four different times.

A. Yes, sir.

Q. And have told the whole thing each time?

A. Yes, sir.

Q. And besides you have testified before the land office?

A. Yes, sir.

Q. And was here four weeks, testifying practically all the time?

A. Yes, sir.

Q. And you have given affidavits to Sharp on one occasion?

A. Yes, sir.

Q. Did you ever give any more to him?

A. No, sir.

Q. Did you ever give any more special agents any statements?

A. No, sir.

(Testimony of Arthur Anderson.)

Q. So you have gone over this several times.

A. Yes, sir.

Q. To-day you are sober? A. Yes, sir.

Q. And you have been sober for two weeks?

A. Yes, sir.

Q. And you have got it in your head pretty well?

A. Yes, sir.

Q. So to-day we will get it just as it is?

A. Yes, sir.

Q. Mr. Anderson, you had known Wells up in the mining country there some time before you filed?

A. Yes, sir.

Q. He was working around there for years, wasn't he? A. Yes, sir.

Q. How long had you known John I. Wells before that?

A. I think eighteen or twenty years.

Q. And you lived, or had a shanty, right near to the land you entered? A. Yes, sir.

Q. And this land for all these years had been not open to entry until that summer of 1901.

A. No, sir.

Q. And after it was generally known that the lands up there were open to entry there was more or less discussion among you placer mining people about taking claims, was there not? A. Yes, sir.

Q. And there was also a good deal of objection among the placer miners about having the locators coming in there?

A. I never heard any that time.

Q. That same summer?

(Testimony of Arthur Anderson.)

A. Very little that summer.

Q. Well, the next spring.

A. It was more during that winter when there was so many people coming up there.

Q. That would be the winter of 1901 and 1902?

A. Yes, sir.

Q. Now your friends Poncia and Botcher, they were very much opposed to having timber and stone entries made up there? A. Yes, sir, very.

Q. And they were the men that got up a petition and remonstrance and sent it in to the Department?

A. Yes, sir.

Q. And wanted all these timber men kept out of the basin? A. Yes, sir.

Q. I suppose, Mr. Anderson, that you didn't have to have somebody tell you that you had a right, as a citizen, to enter a timber and stone claim.

A. No, sir.

Q. You knew all about that, you knew you had that right? A. Yes, sir.

Q. And you knew that the land was open to entry? A. Yes, sir.

Q. And you thought it would be a nice thing to acquire a hundred and sixty acres in your old age?

A. Yes, sir.

Q. At the time you spoke to Wells, or he spoke to you, about it, you had been thinking of it for some time, hadn't you, Mr. Anderson?

A. Yes, sir.

Q. And the only thing you wanted information on was just how to do it. A. Yes, sir.

(Testimony of Arthur Anderson.)

Q. You knew what piece of land you wanted?

A. Yes, sir.

Q. And you knew where it was?

A. Yes, sir.

Q. But you were not very familiar with the way in which they did that business.

A. No, sir.

Q. So that John I. Wells told you that if you would pay him \$25 he would see that you were properly located.

A. Yes, sir.

Q. And you agreed to do that.

A. Yes, sir.

Q. And you paid John \$20, and owe him the other \$5.

A. Yes, sir.

Q. After you had concluded to enter the land and gone that far along, there was some of your other neighbors thought it was a good thing, Nugent, at least.

A. Yes, sir.

Q. And four of you hired a team up there to come down.

A. Yes, sir.

Q. You didn't borrow any money from Wells to pay for the team with?

A. No, sir.

Q. And you paid for that yourself?

A. Yes, sir.

Q. And you didn't borrow any money to pay Wells the \$20 with?

A. No, sir.

Q. That was your own money?

A. Yes, sir.

Q. So when you got down to Boise you had \$20 invested, besides the cost of the rig.

A. Yes, sir.

Q. Then you had somebody make out some papers

(Testimony of Arthur Anderson.)

for you. Do you know who made them out?

A. I don't remember; I think it was Norman Young.

Q. And you took them to the land office?

A. Yes, sir.

Q. And you paid a filing fee there, and a publishing fee, did you not? A. Yes, sir.

Q. Amounting, I think, to about \$12.

A. No, about \$7.50.

Q. You didn't borrow any money to pay that with? A. No, sir.

Q. And you paid that yourself?

A. Yes, sir.

Q. And filed on this land? A. Yes, sir.

Q. Now, Mr. Anderson, up to the day you made your entry, had you entered into any kind of agreement, in writing or by word of mouth, or express contract, or implied contract, with Wells, or with any other person, or firm, or corporation, by which you had agreed to turn this land over to anybody after you got title; had you made any such agreement as that at the time you filed your papers in the land office? A. No, sir.

Q. Had you ever had anybody suggest such an agreement to you? A. No, sir.

Q. Had John I. Wells told you at that time that he represented anybody? A. No, sir.

Q. Did John I. Wells tell you that he had any money at that time? A. No, sir.

Q. As a matter of fact, you knew that John didn't have money enough to buy timber claims?

(Testimony of Arthur Anderson.)

A. Yes, sir.

Q. He didn't have any more than you did, did he?

A. No, sir.

Q. And if John I. Wells had told you that he would buy your claim you wouldn't have believed it, would you, at that time? A. No, sir.

Q. So that at the time you came down here and filed your papers you had no talk with Wells or anybody else about selling it, had you?

A. No, sir.

Q. And neither Wells nor anybody else had had any talk with you about buying it?

A. No, sir.

Q. At the time you filed did you intend to sell it to anybody in particular? A. No, sir.

Q. What did you intend to do with it when you filed on it?

A. I intended to, the same as I did every winter, chop wood on it for my own benefit.

Q. At the time you filed, how did you expect to get money to prove up on it?

A. Well, I was making money at that time; if I had been the saving kind, I could have had money.

Q. Then at that time you were making plenty of money to make final proof? A. Yes, sir.

Q. And if it was not for an unfortunate habit which you have of spending your money, you would have had plenty to do it? A. Yes, sir.

Q. Now, at the time you filed on the land you expected, didn't you, to take a place, as we say, and save enough to pay for it? A. Yes, sir.

(Testimony of Arthur Anderson.)

Q. And keep it for a winter occupation of chopping wood? A. Yes, sir.

Q. Now, after you had filed and publication was given in the newspapers a certain number of days, and the time was approaching to prove up, you had, like lots of other good men, gone wrong, and spent the money? A. Yes, sir.

Q. And you had spent the very same money you had intended to use to prove up with.

A. Yes, sir.

Q. You went to John I. Wells and told him you were going to be short in proving up.

A. Yes, sir.

Q. And that was about how long before you made your final proof?

A. Well, I think it was five or six days before making final proof.

Q. Now, Mr. Anderson, up to that time, up to the time you went to Wells and told him you was going to be short, had you ever had any talk with Wells, or anybody else, about furnishing you money to prove up with?

A. Not furnishing me money to prove up, no.

Q. Had you had any talk with him up to that time about selling out to him? A. No, sir.

Q. Had anybody tried up to that time to buy your claim, or had you tried to sell it, up to the time you first went to Wells, I mean?

A. The only person that came to me was Albert Nugent.

Q. Well, he didn't try to buy it, did he?

(Testimony of Arthur Anderson.)

A. No, but I was proving up at the same time, and he come and asked me if I was willing to sell my claim for \$650.

Q. So Nugent was the first man that talked to you about selling at all? A. Yes, sir.

Q. Nugent spoke to you before Wells ever spoke to you about it? A. Yes, sir.

Q. And he asked you if you was willing to sell for \$650? A. Yes, sir.

Q. And what did you tell him?

A. I told him no.

Q. You still expected to get the money some way to prove up? A. Yes, sir.

Q. So after you found out that your money had been spent in riotous living and you didn't have any to prove up with, you went to Wells?

A. Yes, sir.

Q. And did he tell you that \$650 was the price?

A. He said that was all he could afford to give.

Q. And so you finally accepted it, did you?

A. Yes, sir.

Q. And he paid you \$412.50 out of the \$650 at that time? A. Yes, sir.

Q. And you took the \$412.50 which Mr. Wells had paid you on your claim, and proved up with it.

A. Yes, sir.

Q. And your understanding was that the balance of the \$650 was to be paid to you after title was perfected? A. Well, I think not.

Q. What was the plan?

A. Because I think when I come to Mr. Kinkaid

(Testimony of Arthur Anderson.)

I only received \$137, and I was very much disappointed.

Q. I mean, at the time you sold out to Wells, that was the agreement, was it not, that you was to have enough more to make it \$650, as soon as your title was perfected? A. Yes, sir.

Q. So that you took the \$412.50.

A. Yes, sir.

Q. And that \$412.50 was your money which you had received from the sale of your claim?

A. Yes, sir.

Q. So that when you testified before the land office that this was your money you told the exact and absolute truth? A. Yes, sir.

Q. You took that money and paid it into the land office, and they gave you a temporary receipt?

A. Yes, sir.

Q. And they told you you would get your final receipt some time later? A. Yes, sir.

Q. So you took the temporary receipt and delivered it to Kinkaid for Wells? A. Yes, sir.

Q. And they held that? A. Yes, sir.

Q. Because that was the only title you had to give them? A. Yes, sir.

Q. Because you had been paid \$412.50 on your claim. A. Yes, sir.

Q. Then they paid you \$137.50 more, leaving still \$100 of the \$650 which they told you they would give you when the final receipt came. A. Yes, sir.

Q. The final receipt never did come?

A. No, sir.

(Testimony of Arthur Anderson.)

Q. And you never got the other \$100.

A. No, sir.

Q. So that you didn't know at the time you filed on this land that Mr. Wells represented anybody?

A. No, sir.

Q. And you don't know that he represented anybody at that time now? A. No, sir.

Q. As a matter of fact, he didn't, and his only interest in it, as you understood at that time, was to make \$20 out of you by telling you how to do it?

A. Yes, sir.

Q. And you entered it expecting to keep it, and for your own use? A. Yes, sir.

Q. And changed your mind after you had had a drunk and spent your money? A. Yes, sir.

Q. If you hadn't had that drunk you would have paid finally for that land yourself?

A. Yes, sir.

Q. And probably had it to-day? Now in this affidavit that you and Sharp got up at the time Sharp had the cold, I see he made you say in there that you had an implied understanding. Do you know what an implied understanding means?

A. Yes, sir, I think he put that on, because I could not have said so.

Q. And you have been asked some questions here about what you told other people about an agreement? A. Yes, sir.

Q. Mr. Anderson, if you ever told anybody that you had an agreement, express or implied, you told something that wasn't true?

(Testimony of Arthur Anderson.)

A. I don't think I told anybody.

Q. But the fact is, whatever you may have told, that you made that entry without any agreement of any kind? A. No, sir.

Q. Now, about this relinquishment to Martin, after you had sold out your claim to Mr. Wells, you, I suppose, wasn't particularly interested in these lawsuits? A. No, sir.

Q. You wasn't hiring lawyers to defend title to land you had sold out, Mr. Anderson?

A. No, sir.

Q. And the man you sold to had to look out for his own title? A. Yes, sir.

Q. So Mr. Wells employed the necessary attorneys, and you didn't take any more interest in it?

A. No, sir.

Q. And you was simply here as a witness, to testify to the facts as you understood them, to defend the title you had sold to Mr. Wells?

A. Certainly, yes, sir.

Q. You considered at that time that you had sold out, and whatever rights there was didn't belong to you? A. No, sir.

Q. So that when the Government finally suspended your claim, and Mr. Martin asked you for a relinquishment, you granted it, at the request of Mr. Wells, I believe? A. Yes, sir.

Mr. FRASER.—Q. Mr. Anderson, when you came down to Boise to prove up, you brought considerable money with you from the Basin, didn't you? A. Yes, sir.

(Testimony of Arthur Anderson.)

Q. And you were here four or five days before you did prove up? A. Yes, sir.

Q. And while you were here you spent considerable money, those few days, didn't you?

A. Yes, sir.

Q. Several hundred dollars, didn't you?

A. Well, between two and three hundred.

Q. Well, if you hadn't spent that money you had enough to prove up? A. Yes, pretty near.

Q. So that the reason you had to borrow this money the day you proved up was because you had spent two or three hundred of the money you brought from the Basin? A. Yes, sir.

Q. I believe you testified in the land office, didn't you, in the contest in the United States land office?

A. Yes, sir.

Q. That was a number of years ago, wasn't it?

A. Yes, sir.

Q. Do you think your recollection at that time was a little better than it is now as to these facts?

A. Not that I remember.

Q. That was shortly after it happened, wasn't it?

A. Yes, sir.

Q. Don't you think that at that time you would remember a little better about it than you do now?

A. That was three years after, and I had forgot a good deal about it.

Q. This is about ten years after?

A. Yes, close on to it.

Q. You stated, I believe, that Mr. Wells wrote you in regard to Mr. Worthman, and I think you

(Testimony of Arthur Anderson.)

stated that John I. Wells—was it John I. Wells or Harvey Wells that asked you to get Mr. Worthman?

A. I think it was Harvey Wells.

Q. I call your attention to a question and answer here in the testimony you gave before the land office. This question was asked you at the hearing in the land office: "At whose suggestion did you employ Harry K. Worthman as your attorney in this case?

A. Harvey H. Wells." Was that question and answer correct? A. I think it was, yes, sir.

Q. Then when you stated that it was John I. Wells to-day, you made a mistake?

A. Yes, sir.

Q. Do you wish to make that correction?

A. Yes, sir.

Q. Now, I call your attention to another matter that you have testified to, or that has been put in evidence. This question was asked you in your testimony in the land office, Mr. Anderson: "Q. When you put your mark on that paper that evening, if you did, did you know it contained the statement as follows: There was an implied agreement between John Wells and myself that I was to make a transfer of the land to him or his company that he was representing as soon as I received the patent. This agreement was made prior to the time I submitted proof on said application." Your answer was no, sir?

A. Yes, sir.

Q. You still say that answer was true?

A. Yes, sir.

Q. You had no agreement? A. No, sir.

(Testimony of Arthur Anderson.)

Mr. BUNDY.—Q. Mr. Anderson, in all these statements that you have made, in the sweat-box, and in all the times you have been called upon to testify, before the Grand Jury and in the Borah trial, have you ever testified or stated to anybody that you filed upon that land under an agreement with any person that you was to turn it over to them?

A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Anderson, when Mr. Sharp wrote this affidavit that has been shown to you, and which you signed, were you with him? A. Yes, sir.

Q. You were by his side, weren't you?

A. Well, pretty close to him; I can't say that I was by his side, probably a few feet.

Q. You were drinking together, you and Mr. Sharp? A. Yes, sir.

Q. And you were on very good terms, weren't you? A. Yes, sir.

Q. And you were talking to him in answer to his questions, I suppose?

A. Well, at times; sometimes we talked about something else in between that.

Q. He did ask you a good deal about your entry, didn't he? A. I think he did.

Q. And he wrote down on paper what you said to him? A. I think he did.

Q. That is, he would ask you a question, and you would answer it, and he would write down your answer, or something?

(Testimony of Arthur Anderson.)

A. Write down something.

Q. You didn't know just what it was?

A. No.

Q. Did you ever get a letter from Mr. John I. Wells?
A. No, I think not.

Q. Now, are you sure about that, Mr. Anderson?

A. Yes, I am pretty sure of it.

Q. You remember you told Mr. Gordon, this gentleman here, a few minutes ago that you did get a letter from John I. Wells.

A. Well, I made a misstatement then; probably Norman Young got a letter to notify me.

Q. Well, wasn't it this way: That Norman Young came to you with a letter which he had gotten from John Wells?
A. Yes, I think.

Q. And did he read that letter to you?

A. Probably he did; I ain't positive of it.

Q. Was it in that letter that Mr. Wells said he had employed Mr. Worthman?

A. No, he asked me if I was willing that he should employ Mr. Worthman.

Q. Didn't Mr. Wells say in that letter that Mr. Worthman was his attorney and that he wouldn't charge you anything?

A. He never spoke about the payment at all.

Q. He simply asked Mr. Young to find out from you whether you would be willing to let Mr. Worthman represent you?
A. Yes, sir.

Q. And you said yes?
A. Yes, sir.

Q. Mr. Young was then engaged in keeping a store at Pioneerville, was he?

(Testimony of Arthur Anderson.)

A. No, Centerville.

Q. Well, then afterwards you found Mr. Young here in Boise, didn't you? A. Yes, sir.

Q. What was he doing then?

A. In Boise?

Q. Yes.

A. Well, I think he was working for Falk.

Q. He was bookkeeper at Falk's wasn't he?

A. Yes, sir.

Q. And you came down here to Boise and went to see Mr. Young?

A. Yes, I saw him during the time I was here.

Q. And you went to see him for the purpose of getting him to draw your application paper, I think?

A. No, I thought he would do it for me; some of the boys got him to.

Q. Whose application papers did Mr. Young draw at that time besides your own?

A. I think it was James T. Ball and Edward Hunter; that is all I can remember.

Q. And you went along with those two gentlemen, and Mr. Young drew your papers?

A. Well, they went ahead of me, and I come afterwards.

Q. And Mr. Young had been advising you while you were up in the country about the matter, had he?

A. No, sir, never spoke to him up there.

Q. You didn't see him up there?

A. No, sir.

Q. Were you born in this country, Mr. Anderson? A. No, sir.

(Testimony of Arthur Anderson.)

Q. Where were you born?

A. I was born in Sweden.

Q. How old were you when you came to this country? A. I think I was seventeen.

Q. And you had lived up there near Pioneerville since 1877?

A. No, I come there in '65, but I moved down where I am in '77.

Q. Which was not far from the land you entered?

A. No, right there, close to it.

Q. There was a good deal of vacant timber land there at that time?

A. Yes, sir, it was all vacant when I took it up; there was only two or three claims taken up then.

Q. You mean in 1901, when you made your application, it was all vacant around there?

A. Yes, sir.

Q. You knew it was vacant, didn't you?

A. Yes, sir.

Q. Did you know anything about this timber land law which permits people to take up timber land and buy it from the Government?

A. No, sir, I knew very little about it.

Q. How long had you known about it?

A. Well, I never paid much attention; the only thing I knew about it, I had a neighbor that used to talk a good deal about it.

Q. Who was that?

A. His name was Markleson.

Q. He told you that you could take up a timber land claim and pay the Government four hundred

(Testimony of Arthur Anderson.)

and some odd dollars for it, and sell it?

A. I don't think he did; only he said there will be a good deal of timber land taken up here, after it had been surveyed.

Q. How long before you took up this timber claim? A. Oh, it was probably a week.

Q. Had you never heard of the timber land law before that? A. No, sir.

Q. You didn't know that there was such a law?

A. No, sir.

Q. Now, as I understand, you had been cutting wood on this land for about twenty-five years, hadn't you? A. Yes, sir, in the winter time.

Q. Anybody ever interfere with you?

A. No, sir.

Q. Anybody ever tell you it was against the law to cut wood on there? A. No, sir.

Q. Anybody ever try to make you pay any money for cutting wood off the land? A. No, sir.

Q. How much of the wood had you cut in twenty-five years?

A. Oh, not a great deal, probably two hundred cords.

Q. Now, when you came down here to make your final proof you came about a week, I think, before the day set for your final proof, didn't you?

A. Well, four or five days.

Q. And how long was it after you came to the City of Boise that you went to see Mr. Wells?

A. I think I saw him the day after I came down.

Q. You told him that day that you didn't have

(Testimony of Arthur Anderson.)

enough money to prove up on? A. Yes, sir.

Q. And that you needed more money?

A. Yes, sir.

Q. How long had you known Mr. Wells at that time?

A. Oh, I think somewhere about eighteen or twenty years, I don't remember.

Q. Where did you first know him?

A. Up in Pioneer.

Q. He lived up in that country for a long time, didn't he?

A. Yes, he was working up there more or less.

Q. What was he doing? A. Mining.

Q. Was he mining, as you were, for wages?

A. No, sir, I think he was running an engine up there, hoisting engine.

Q. Well, he was working for wages, was he?

A. I think, yes, but then I think he had some property of his own up there, too.

Q. I think you told Mr. Bundy, this gentleman, that Wells was as poor as you were.

A. Well, the time I took up the claim, he was.

Q. He had lost some money, you think?

A. Well, I guess he did.

Q. What did he do after he left that country and came down to Boise?

A. Well, that I can't tell.

Q. What did you see him do when you found him here in Boise?

A. He didn't seem to be doing anything.

Q. Was he tending bar up in the country?

(Testimony of Arthur Anderson.)

A. He was tending bar when he was up there; it was only a short time though.

Q. You don't know what he was doing after he came to Boise? A. Not while in Boise.

Q. Had you ever borrowed any money from him before? A. No, sir.

Q. When you entered this land, Mr. Anderson, you didn't intend to sell it to anybody, I believe?

A. No, sir.

Q. Your idea was to keep it for your own use?

A. Yes, sir.

Q. And continue to cut wood on it?

A. Yes, sir.

Q. And you had some money about that time?

A. Yes, sir.

Q. Do you mind telling us how much you had?

A. I think I must have had between two and three hundred dollars, close on to three hundred.

Q. That was in September, 1901?

A. No, I didn't have that much then because I worked a mining claim after that.

Q. You mean you worked a mining claim for yourself, or for somebody else?

A. No, for myself.

Q. You didn't get any wages for that, did you?

A. No, I was running a ditch there, selling water, and I used the water that I had to spare on that claim, and when I had that worked out I come down with the clean-up.

Q. That was when you came down to make your proof?

(Testimony of Arthur Anderson.)

A. No, it was about ten days—no, I don't know as it was that long—before I had to prove up, I come down here.

Q. How much did you bring with you when you came, after the clean-up?

A. I brought close on to \$1600 in dust, but the dust was pretty dirty; I drew \$1212 from the bank; I brought it to the assay office.

Q. The time you came down here about four or five days before you proved up, how much money did you bring?

A. Between two and three hundred dollars, close on to three hundred, I think; I ain't positive. I had over \$300 when I left home.

Q. Now, Mr. Anderson, how did you come to think of asking Mr. Wells to help you out in making your final proof? A. What is that, sir?

Q. How did you come to think of Mr. Wells when you found you needed money to make final proof?

A. I understood he was advancing money to other men.

Mr. BUNDY.—Nugent told him, he says.

Mr. KEIGWIN.—Q. At that time you thought that Mr. Wells was as poor as you?

A. This was three months after.

Q. And he had gotten rich in the meantime?

A. Well, it looks like it.

Q. At any rate, you heard that he had money?

A. Yes, that's the way I understood it.

(Testimony of Arthur Anderson.)

Recross-examination.

(By Mr. BUNDY.)

Q. After you had sold out, or made a bargain to sell out to Wells for \$650, and he had paid you \$412.50 of the purchase price, you kind of pretty near backed out then, didn't you, Mr. Anderson, and went to consult a lawyer about it?

A. No, that was before I proved up.

Q. But it was before you proved up that you sold to Wells and got the \$412 to prove up with?

A. Yes, sir.

Q. And after Wells had given you \$412.50 you thought it was pretty small, and do you remember going to Hawley and asking him if you proved up if you would lose your rights? A. Yes, sir.

Q. And he told you that you would?

A. Yes, sir.

Q. And that was after you had sold to Wells, and he had paid you \$412.50 on account and he owed you the balance? A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Anderson, did I understand you to say that you sold to Wells when he gave you that \$400?

A. Yes, sir.

Q. You understood, when he gave you that money, that he was to get your claim?

A. Yes, sir.

(Witness excused.)

Mr. FRASER.—Counsel for the defendants move to strike out all the evidence of the witness Arthur

(Testimony of Arthur Anderson.)

Anderson, for the reason that the same is incompetent, irrelevant and immaterial, does not tend to prove any of the allegations of the bill, and it is not charged, and the record shows, that the witness never acquired title to any Government land under the Timber and Stone Act.

Here an adjournment was taken until ten o'clock, A. M., Tuesday, March 20, 1909.

The taking of testimony was resumed at ten o'clock A. M., Tuesday, March 2, 1909, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Albert P. Nugent, on Behalf of the Complainant.]

ALBERT P. NUGENT, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Albert P. Nugent?

A. Yes, sir.

Q. Where do you reside, Mr. Nugent?

A. About two miles east of Boise.

Q. How long have you resided there?

A. A little over a year this last time.

Q. Where did you reside prior to that?

A. Well, at different places, Silver City.

Q. Where did you reside in 1901?

A. In the Boise Basin.

Q. What was your occupation at that time?

(Testimony of Albert P. Nugent.)

A. I was working in a mine at that time.

Q. Laborer?

A. No, I was mining, framing timbers.

Q. Did you know John I. Wells at that time?

A. I did.

Q. Is that the gentleman present in court?

A. Yes, sir.

Q. Did you know Mr. Arthur Anderson at that time?
A. Yes, sir.

Q. Did you know Mr. John Kinkaid at that time?

A. Not at that time; shortly after that time I did, yes; not at the time I was working in the mine.

Q. You took up a claim under the Timber and Stone Act in 1901, did you?

A. If I remember right, yes.

Q. Did you ever take up any other than the one claim, or did you ever file on more than the one claim?
A. No, I never did.

Q. Who first spoke with you about taking up a timber claim?
A. John I. Wells.

Q. What did he say about it?

A. Well, he wanted to know if I didn't want to take up—

Mr. BUNDY.—I want to interpose the same objection to the examination of this witness as to that of Arthur Anderson, for the reason that the complaint in this action does not allege or claim that the defendants, or any of them, acquired any land by or through any entry made by this witness, and that being true, it is incompetent, irrelevant, and immaterial.

(Testimony of Albert P. Nugent.)

A. (Continued.) He wanted to know if I didn't want to take up some timber land.

Mr. GORDON.—Q. Tell all that he said.

A. That has been some time ago; I don't know as I can tell exactly.

Q. Well, as near as you remember.

A. Well, he wanted to know if I didn't want to take up some timber land, and that I could sell the timber off the land, and I told him that I didn't know, and so later on I did take up some timber land.

Q. Was that all that was said? Did he tell you how much it would cost you, or how much you could make out of it, or what?

A. Well, he said it would cost me \$20 to locate the claim for me, and that I could sell the timber off of this claim.

Q. Did he tell you how much you could make out of it?

A. He said it would be about fifty cents a thousand, but later on, the way it turned out, I had to dispose of the land entirely.

Q. Who did you have to dispose of it to?

Mr. BUNDY.—We object to that as incompetent, irrelevant, and immaterial.

A. I don't know.

Q. Why do you say you had to dispose of it? Who led you to believe that?

A. He told me that there would be parties that would take it.

Q. Well, was that before you filed on the land?

Mr. BUNDY.—We object to all these questions

(Testimony of Albert P. Nugent.)

as leading and suggestive, and ask that the witness be called upon to give the conversation, and not be called upon for conclusions.

Mr. GORDON.—Q. Or after?

A. I don't remember exactly whether it was before or after; I think it was after, but I am not sure.

Q. Now what was said on that occasion?

A. Well, as near as I can remember, he said that it was changed, that the proposition was changed, and the land would have to be transferred.

Q. What proposition did he refer to?

Mr. BUNDY.—We object to that as incompetent, irrelevant, and immaterial, and ask that the witness be asked to give the conversation between the parties, and not his conclusion.

A. Well, he said that the parties that would take the timber land, that there would be parties that would take the timber land, and would pay for the title of the land.

Q. And did I understand you to say that he said that had been changed?

A. Well, my understanding was, at first, that I was to sell the timber, but later on I was to dispose of the land.

Q. And you came down to the land office and filed?

A. Yes, sir.

Q. Did you pay Mr. Wells any money?

A. I paid him \$20 for locating me.

Q. When did you pay him \$20?

A. In Centerville.

Q. When was that?

(Testimony of Albert P. Nugent.)

A. I don't remember the date exactly, but it was before I filed.

Q. You paid him \$20 before you filed?

A. Yes, sir.

Q. Do you remember where you paid him that?

A. No, it was in Centerville some place; that is, if I remember correctly.

Q. Was it at Mr. Wells' house?

A. I don't remember.

Q. And did he take you over this land?

A. No, sir.

Q. What were you paying him \$20 for; what did you suppose he had to do with it?

A. Well, he knew where the land was.

Q. Didn't you know where the land was?

A. He pointed out from town where it was.

Q. You stayed in town and he pointed it out somewhere in the distance? A. Yes.

Q. And that is as near as you got to the land, is it? A. Yes, sir.

Q. And you thought it was worth \$20 to pay him for pointing out a piece of land in the distance?

A. Not exactly that, but that was to locate the piece of land, that I would know what to file on.

Mr. BUNDY.—Give you the numbers, you mean?

A. Yes.

Mr. GORDON.—Q. Well, he gave you the numbers then? A. Yes.

Q. And did he tell you what to do with them?

A. Yes; go to the land office and file on it.

Q. How long was that before you went to the

(Testimony of Albert P. Nugent.)

land office that he gave you the numbers?

A. I don't remember whether it was in town here or up in the Basin.

Q. When you came to Boise from up in the Basin did you come alone, or who came with you?

A. No, I came down in a private conveyance.

Q. Well, who came with you?

A. Well, I don't remember exactly positively, but Arthur Anderson and a man by the name of Caro.

Q. Did Mr. Ball come with you?

A. I don't remember; I don't know.

Q. Did Edward Abel Hunter come with you?

A. I don't remember that part about it, exactly.

Q. And how long before you filed did you come to Boise? A. How long before I filed?

Q. Yes. Did you come down from the Basin that day, or several days before?

A. No, I come down that day.

Q. Did you go to Mr. Wells' office that day?

A. I don't remember whether I went—well, he didn't have an office.

Q. Well, did you see him that day?

A. Yes, I saw him that day.

Q. Where? A. On the street somewheres.

Q. Did you look him up, or run across him casually?

A. Not exactly; just simply met him; he was in town.

Q. And did you get your numbers from him that day?

A. I don't remember, but I believe we did.

(Testimony of Albert P. Nugent.)

Q. Where did you go to have your filing papers made out?

A. Why, I believe Norman Young, if I remember right, made my papers out for me.

Q. Where did he make them out?

A. I believe it was in Falk's store; I am not sure, but—

Q. Was that the Falk Mercantile Company?

A. Yes.

Q. And did Mr. Young live up in the Basin?

A. He was working for the Falk Mercantile Company here.

Q. He had lived, before that time, up in the Basin? A. Yes, sir.

Q. Did Mr. Wells tell you to go the the Falk Mercantile Company?

A. I don't remember whether he did or not, but I know that Norman Young understood it better than I did, and that he would be a good man to make them out.

Q. Had you ever talked to Mr. Norman Young prior to this time about your filing papers?

A. I don't believe I had.

Q. Did you go to Norman Young with anyone, or did you go alone?

A. I don't remember; I believe that Arthur went with me, but I am not sure.

Q. Arthur who? A. Anderson.

Q. Do you remember whether he went with you and the papers were made out for both of you at that time?

(Testimony of Albert P. Nugent.)

A. No, I am sure I don't remember exactly about that; I know that he made mine out.

Q. Did you go to the land office alone, or did someone go with you?

A. No, Arthur Anderson and I went together.

Q. Well, does that refresh your recollection as to whether he went to the Falk Mercantile Company's store with you?

A. No, I wouldn't say positively.

Q. Where did you meet Mr. Anderson to go to the land office with him?

A. Why, I don't remember; on the street somewhere.

Q. Did Mr. Wells go to the land office with you?

A. I don't believe that he went with me; I am not sure; I don't remember exactly.

Q. Was he at the land office when you arrived there?

A. He might have been; I don't remember.

Q. Do you remember whether he was there any time while you were in the land office that day?

A. Well, I believe he was, but I am not sure.

Q. What suggests to your mind that he was there?

A. Well, in regard to filing on this property, on this land.

Q. You say you and Mr. Anderson filed at the same time? A. Yes.

Q. Did anyone else file that came from Pioneer-ville at that time?

A. Well, not that day; I don't remember exactly;

(Testimony of Albert P. Nugent.)

I think Hal Wells did, but I am not sure.

Q. Did you see Mr. Wells after you left the land office? A. Yes.

Q. That same day? A. Yes.

Q. Where did you see him on that occasion?

A. On the street.

Q. Stop and talk with him? A. Yes, sir.

Q. Talk with him about this property?

A. Well, we might have said a few words about it, but I don't remember exactly what they were.

Q. And then you returned up to the Basin?

A. Yes, sir.

Q. And did Mr. Anderson return with you?

A. Yes, sir.

Q. Well, did you have any talk or communication with Mr. Wells concerning the land on which you filed, between the time that you entered the land and the time you made your final proof?

A. Yes, I possibly did, but I don't remember just what they were.

Q. Well, did you receive any letters from him with reference to making final proof?

A. Well, yes, I think I did.

Q. Do you know where the letters are now?

A. No, I don't, I am sure; I don't remember, but I know I got some letters from him after I made final proof; before I don't remember; I think I did, though.

Q. I show you letter addressed to Mr. John I. Wells, dated December 21, 1902, and ask you if you signed that letter. (Hands witness letter.) Do you

(Testimony of Albert P. Nugent.)

have to read it over to know whether you signed it or not?

A. No, but I wanted to read it over though.

Q. Did you write that letter to Mr. Wells and mail it to him? A. I did.

Mr. GORDON.—We offer in evidence the letter identified by Albert P. Nugent, dated December 21, 1902, which has just been identified by Mr. Nugent.

(Letter marked Plaintiff's Exhibit No. 140A.)

Q. Mr. Nugent, wasn't this letter in response to a letter that Mr. Wells had written you?

A. That was after I filed, that letter, is it not?

Q. Yes.

Mr. BUNDY.—It was after you had made final proof, eleven days after you made final proof.

A. Yes, I believe I got a letter in answer from that; in fact I almost know I did.

Mr. GORDON.—Q. Did you get one before it?

A. I don't remember whether it was before or afterwards.

Q. I will read the letter and see if it refreshes your memory: "Silver City, Idaho. December 21, 1902. Mr. John I. Wells. Dear Friend: This finds me in good health, but that is about all. I have not had very much work, and so I am all up at the present time, but I guess I will make it till spring. I am eating three times a day all right. I got a letter and a notice from the land office that my timber claim was going to be cancelled if I did not come and prove and show proof it should not be cancelled. Now what will I do about it? In this case please

(Testimony of Albert P. Nugent.)

write and let me know what I had better do about it. I have got until the 9th of January to file an application. If I do not it will cancel. Please write and let me know about it." Now was that in response to any letter you had received from him?

A. I don't remember whether it was before or afterwards; I think it was after; I got a letter after I wrote that to him.

Q. Did Mr. Wells ever tell you that he would furnish you the money with which to make your final proof? A. Yes, sir.

Q. When was that?

A. Well, that was in the beginning, the first time I talked with him about it.

Q. That was before you filed? A. Yes, sir.

Q. He told you he would furnish you the money with which to make your final proof?

A. He said it would be furnished; he didn't say he would at the time, but he did later on.

Q. And how long before you made final proof did you talk with Mr. Wells about furnishing you the money?

A. I don't remember exactly what length of time it would be.

Q. You didn't have any talk, I understand, with him about it after the first conversation, until about time to make the proof?

A. Well, I might have, but it has been so long ago that I have forgotten, but I understood that the money would be furnished to make final proof with.

Q. And how long before you made final proof did

(Testimony of Albert P. Nugent.)

you come to Boise? I mean, as near as you can remember.

A. Why, I don't know. I went to Thunder Mountain in between there somewheres; I don't remember exactly the dates; I made final proof, and then I might have went afterwards, I don't remember.

Q. Well, do you remember how long you were in Boise before you made final proof?

A. Why, I don't remember; it was something like a week; I don't remember exactly.

Q. Well, who did you come down with?

A. When I came down to make final proof?

Q. Yes. A. I came down on the stage.

Q. Did Mr. Arthur Anderson come with you?

A. I don't remember whether he did or not.

Q. And did you go to see Mr. Wells the day you arrived here?

A. Well, either that day or the next day.

Q. Well, what did you go to see him for?

A. About, in regard to making final proof.

Q. In regard to the money to make final proof with? A. Certainly.

Q. Did you ask him for the money that day?

A. Well, he asked—I asked him about it, if the money was ready.

Q. And what did he say?

A. Well, he said no, that it hadn't got here yet.

Q. And what further was said?

A. But he said it would be here in a few days.

Q. Well, were you with Mr. Wells on that oc-

(Testimony of Albert P. Nugent.)

casation alone, or did someone go to his office with you?

A. Well, I don't remember, but I believe Arthur Anderson was with me.

Q. Well, when was the next time you saw Mr. Wells?

A. Why, I don't remember, but it was the next day or so, or possible every day; I don't remember.

Q. And did you talk with him about the money to prove up on each occasion?

A. Well, yes, asked him about it, if it had got here yet.

Q. And what did he say?

A. Well, he said it hadn't come yet.

Q. When did you get the money with which to make your proof?

A. It was after the time had passed to make final proof.

Q. How long afterwards?

A. I don't remember; three or four days, or a week.

Q. And then you received the money, did you?

A. Yes.

Q. Now, where did you go to get that money?

A. Well, I went up in the building on the corner of Eighth and Main.

Q. Whose office? A. Kinkaid's office.

Q. What Kinkaid? A. John Kinkaid.

Q. Well, did Mr. Wells go with you?

A. I don't know whether he went with me or not, but he was there.

Q. Did anyone else go with you?

(Testimony of Albert P. Nugent.)

A. Arthur Anderson.

Q. Anyone else?

A. I don't remember now.

Q. Was Mr. Harvey Wells there?

A. I believe he was.

Q. Was Mr. Goldtrap there?

A. I don't remember.

Q. Now state what happened in the office of Mr. Kinkaid that day.

A. I can't say exactly what was said, but I know they had the money there.

Q. How much was given you?

A. Well, the money wasn't given to me there.

Q. Well, who was the money given to?

A. Well, Wells, the money was given to Wells.

Q. Who gave it to him? A. Kinkaid.

Q. And was any money given to Mr. Anderson in Mr. Kinkaid's office that you know of?

A. Not that I know of, no.

Q. Did the party leave Mr. Kinkaid's office together?

A. Arthur Anderson and myself and John Wells went to his office in the Pacific Hotel.

Q. And what did you do when you got to the room in the Pacific Hotel?

A. He counted out the money for us.

Q. And how much did he give you?

A. He gave me \$412.50.

Q. Do you know whether he gave Mr. Anderson any money there? A. He did.

Q. How much did he give him?

(Testimony of Albert P. Nugent.)

A. He gave him the same amount.

Q. And did he tell you what to do with that money?

A. He told us to go to the land office and make final proof.

Q. And was there anything said between any of you as to where you should say you got that money, when you made your final proof at the land office?

A. Yes.

Q. What was it? A. He said that—

Q. Who said?

A. Mr. Garrett, the receiver—

Q. I say, at Mr. Wells' room was anything said as to what you should say about where you got that money? A. Yes.

Q. What was it?

A. He said that if Mr. Garrett asked me where I got this money I should tell him I worked for it, and had part of it, or something to that effect.

Q. Was Mr. Anderson there when that statement was made? A. Yes, I believe he was.

Q. And you went to the land office?

A. Yes, sir.

Q. Did Mr. Anderson go with you?

A. Yes, sir.

Q. And did you make that statement when the question was asked as to where you got the money?

A. I did.

Q. When you paid this money into the land office, did they give you a receipt for it?

A. At the land office?

(Testimony of Albert P. Nugent.)

Q. Yes.

A. Why, I believe they did; I am not sure.

Q. What did you do with that receipt? Did you

A. Yes, I believe we did.

Q. Aren't you positive about it?

A. Yes, I am pretty positive we went there, either that day or the next; I think it was that day though.

Q. Did Mr. Anderson go with you?

A. Yes.

Q. Were you told to go there or did you just happen to go there?

A. No, we was going there to get the money.

Q. And did you take this receipt along with you that they gave you?

A. Yes.

Q. And did Mr. Wells go with you?

A. Yes.

Q. And was Mr. John Kinkaid at his office?

A. Yes.

Q. Well, state what happened when you got to John Kinkaid's office on that occasion.

A. Well, they was to give us \$250 apiece for these go to Mr. Kinkaid's office again that day? claims, and they paid me \$150.

Mr. BUNDY.—Well, now, I object to this way of putting in evidence as to the witness' construction or conclusion of some alleged contract, and insist that if he is to testify with reference to it at all he be required to give the conversation which constituted it.

Mr. GORDON.—Answer the question.

A. And so they gave me \$150.

Q. Did they give Mr. Anderson any money there

(Testimony of Albert P. Nugent.)

at that time?

A. They did, but I don't remember the exact amount.

Q. And who gave you that \$150? A. Wells.

Q. Did you see where he received the money from with which to give you that?

A. It come from Kinkaid's office there.

Q. Was it paid you in Kinkaid's office?

A. Yes.

Q. And did you see Mr. Kinkaid give him the money?

A. Well, I don't remember exactly about that, but they had money there on the table, I don't remember about that.

Q. And did you ask them why they only gave you \$150? A. Well, they said—

Mr. BUNDY.—The question is, did you ask them why they only gave you \$150.

A. Why, they said—

Mr. BUNDY.—The question is—

Mr. GORDON.—If the Court please, I object to this; he will have an opportunity to cross-examine this witness, and it seems to me improper; every time a witness starts to answer a question he ought not to be interrupted by counsel.

The EXAMINER.—I want the witness to give time, after the question is propounded to him, for the defendants to make their objection, if they see fit. At the same time, of course, Mr. Bundy understands that the attorney should be permitted to put the questions.

(Testimony of Albert P. Nugent.)

Mr. BUNDY.—I am not objecting to the question; I am objecting to the answer he is starting to give.

Mr. GORDON.—It seems to me that it is not for counsel for the defendants to interfere with the answer, if I am satisfied with the answer, whether it is responsive or not.

The EXAMINER.—He has a right to object to the answer because it is not responsive, and for other reasons, of course.

Q. (Last question read by the stenographer.)

A. They said they would give me the other \$100 when the final patent came.

Q. Did you ever get the other \$100?

A. No.

Q. And did you return to the Basin after you had made your proof and had been to Mr. Kinkaid's office?

A. Yes, sir.

Q. Did you go back alone, or did Mr. Anderson go with you?

A. I don't remember about that.

Q. When did you next hear about this timber claim?

A. I don't remember the date; it was some time in the Basin, afterwards.

Q. Well, who did you hear from?

A. Well, I believe I wrote to Wells about it.

Q. Did you write any other letter to Wells about it prior to the one which you identified, which I read here awhile ago?

A. I don't remember; I might have; I don't remember about it.

Q. Well, were you notified that there was any-

(Testimony of Albert P. Nugent.)

thing wrong with your claim?

A. Yes, I got a notice from the land office.

Q. And did you write to Mr. Wells after you heard that? A. I did.

Q. And is that the letter that you have identified, and that I read to you? A. Yes, sir.

Q. And do you remember whether you received any letter from Mr. Wells in response to that?

A. Yes, I did; I received a letter.

Q. I show you letter addressed to Albert P. Nugent, dated December 3, 1903 (it looks like), signed John I. Wells, and ask you if you received that letter from Mr. John I. Wells? A. Yes, sir.

Q. Did you receive it in that envelope?

A. I don't remember whether it was that envelope or not; I know I got it in Silver City, I think it was, yes; I don't know whether it was in that envelope or not.

Q. Do you know the handwriting of John I. Wells?

A. Well, that is the letter I received all right, I know that.

Q. I will ask you if the envelope is in the same handwriting?

A. Yes, that is the handwriting.

Q. And do you know Wells' handwriting?

A. Well, no; I don't say I do, but I know that is the letter I received from him.

Q. And this envelope attached was enclosed for you to return an enclosure to him in, was it?

A. I believe, yes, it was.

(Testimony of Albert P. Nugent.)

Mr. GORDON.—We offer in evidence the letter, dated December 3, 1903, addressed to Albert P. Nugent, Silver City, signed John I. Wells, and also the envelope, stamped, addressed to John I. Wells, Boise, Idaho, which was enclosed with the letter.

(Marked Plaintiff's Exhibit No. 140B.)

Q. Mr. Nugent, attached to the letter which you have just identified, of John I. Wells, I will ask you if that paper, entitled, "In the matter of the hearing of the suspension of timber and stone S. S. No. 225, made by Albert P. Nugent, being authorization for employment of an attorney," was enclosed in the letter which you have just identified? A. It was.

Mr. GORDON.—We offer that paper just identified, which is attached to the letter, also in evidence.

(Marked Plaintiff's Exhibit No. 140C.)

I read this in evidence: "Boise, Idaho, December 3, 1903. Albert P. Nugent, Silver City. Friend Bert: Enclosed find paper authorizing Harry Worthman to act as your attorney; he is also mine. It won't cost you anything, and I will see you through, and that you get your land, so don't say anything to anyone, and sign this paper and return to me. Happy New Years. Yours as ever, John I. Wells. Don't let anyone see this letter." The paper attached, which has been identified, "United States Land Office, Boise, Idaho. In the matter of the hearing of the suspension of T. & S. s s No. 225, made by Albert P. Nugent, for the east half of the northeast quarter of section fifteen, and the southeast quarter of the southeast quarter of section ten,

(Testimony of Albert P. Nugent.)

and the southwest quarter of the southwest quarter of section 11, township 7 north of range 5 east, Boise Meridian. To the Register and Receiver of the United States Land Office at Boise City, Idaho. Gentlemen: You are hereby notified that I have employed Mr. Harry S. Worthman, attorney at law, of Boise City, Idaho, in the above-entitled hearing, and hereby authorize said Harry S. Worthman to represent me in all matters pertaining to said hearing in the United States local and general land office." Mr. Nugent, did you not return this paper enclosed to you by Mr. Wells, authorizing Mr. Worthman to act as your attorney, did you? A. I did not.

Q. Did you ever authorize or employ Mr. Worthman to act as your attorney? A. No, sir.

Q. Did you ever pay Mr. Worthman anything for his services? A. No, sir.

Q. You did later appear at the land office, didn't you, with reference to this claim? A. Yes.

Q. Did you ever receive any further communication from Mr. Wells with reference to this matter?

A. I don't remember if I did.

Q. Did you ever employ anybody to appear for you at the land office or to represent you in any manner before the land office with reference to this claim? A. No, sir.

Q. Your claim was cancelled, wasn't it?

A. Yes, sir.

Q. And did you ever give a relinquishment of your claim to anyone; after it was canceled did anyone ask you to relinquish your claim?

(Testimony of Albert P. Nugent.)

A. No, sir.

Q. Did you ever talk to Mr. Frank Martin about it?

A. No, sir.

Q. Did you ever talk to Mr. Norman Young about it?

A. No, sir.

Q. Did I ask you who it was that told you to say that the money was your own that you paid into the land office?

A. Yes, sir.

Q. Who did you say?

A. Why, Wells told me, I think.

Q. Where did he tell you—when he gave you the money?

A. Why, just before that, or shortly after that.

Q. Who was present?

A. I don't remember.

Q. Was it in Wells' rooms, or on the street, or in Kinkaid's office, or where?

A. I don't remember; it was sometime during that time though.

Q. I show you a due-bill, dated December 10, 1901, signed Albert P. Nugent, and ask you if you signed that?

A. Yes, sir; that is my signature.

Q. Now, do you remember when you signed this, and where?

A. I don't remember just exactly where I signed it.

Q. Do you know to whom you gave this?

A. To Wells.

Q. Now, I notice that this is for \$137.50. Now, I understood you to say that you received \$150.

A. Yes, I did, but that is a different paper.

(Testimony of Albert P. Nugent.)

Q. Well, did you give a receipt for the \$150?

A. No, I don't think I did.

Q. Now, when you went to the land office the first time and filed your papers, did you pay any money into the land office on that occasion? A. Yes.

Q. How much did you pay?

A. \$37; I don't remember.

Q. Was it \$37 or \$12.50?

A. I don't remember, but it was for the filing and the advertising.

Q. Well, was that money furnished you, or was it your own money? A. No, that was my own.

Q. Do you know how much that was? Do you remember whether it was \$7.50 or \$12.50 or \$37.50?

A. For filing?

Q. Yes.

A. I don't remember, but it was whatever was required by law.

Q. Now do you know who wrote this due-bill?

A. No, I don't.

Q. Do you know whether you signed it the day that you received the money?

Mr. BUNDY.—The final proof money?

Mr. GORDON.—No, I mean the money he received for—

Mr. BUNDY.—\$137.50?

Mr. GORDON.—Yes, I will ask him. Did you receive \$137.50? A. No, sir.

Q. How much did you receive?

A. Yes, I did, to.

Q. Well, now, did you receive that—

(Testimony of Albert P. Nugent.)

A. Please let me look at that once more (witness takes paper)?

Q. Does that refresh your memory as to whether you received \$137.50 or \$150?

A. It was \$137, I remember now; there was \$12.50 taken out for something or other in regard to the advertising, or some matter, I don't remember just what it was.

Q. And you signed this on the occasion that you went to Kinkaid's office and carried your receipt there, after you had made your final proof?

A. Yes.

Q. And do you remember whether this was given in Kinkaid's office or not?

A. I don't remember exactly, but I believe it was.

Mr. GORDON.—We offer in evidence due-bill, dated Boise, Idaho, December 10, 1901, (figures) \$137.50. (Below that) Due John I. Wells or order \$137.50. (Signed) Albert P. Nugent.

(Marked Plaintiff's Exhibit No. 140D.)

Q. Do you remember Mr. Louis L. Sharp, the special agent of the land office?

A. Yes, sir.

Q. Did he come to see you and talk with you about the manner in which you took up this claim?

A. Yes, sir.

Q. And did you make an affidavit for him?

A. I did.

Q. Do you know where that affidavit is?

A. I believe it is with the Government now.

Q. I will ask you if you remember whether or

(Testimony of Albert P. Nugent.)

not, in your conversation with Mr. Sharp, you made this statement: "On the 24th of September, 1901, I filed timber and stone entry No. 225, for the north half of the northeast quarter of section 15, the southeast quarter of the southeast quarter of section 10, southwest quarter of the southwest quarter of section 11, township 7, north of range 5 east, Boise Meridian. I made this entry at the request of John I. Wells, Boise, Idaho. We expressly agreed that I was to get from him, the said John I. Wells, \$250 at the time I made proof, for making the above entry, and it was expressly agreed that the said John I. Wells was to pay all expenses of making entry and purchasing the land." Did you tell Mr. Sharp that? A. I did.

Q. Do you remember making this statement to Mr. Sharp: "I went to John I. Wells' office—

Mr. BUNDY.—Are you reading from the affidavit in question?

Mr. GORDON.—I am reading from what purports to be a copy of the affidavit. "I went to John I. Wells' office and he gave me \$412.50 to purchase the land with at the time of making proof, and the land office fee on the day I submitted proof. I made proof and used this money that was given me by John I. Wells. I took the receipt I got from the receiver of the United States land office and gave it to John Kinkaid, Boise, Idaho, who gave me \$137. The said John T. Kinkaid then informed me that I would receive the balance, \$100, as soon as I got a patent for the land and made a transfer of the

(Testimony of Albert P. Nugent.)

same.” Do you remember making that statement to Mr. Sharp?

A. Well, words to that effect, yes.

Q. “Out of the \$412.50 paid me by John I. Wells \$12.50 was given me as part of the \$250.” Do you remember that?

A. Yes, that’s the way it come in.

Q. “Until the time I made proof I did not know that John Kinkaid was interested in the scheme, but during the above transactions neither John I. Wells or John Kinkaid made any attempt to disguise the fact that they were interested together in managing a large timber land deal and securing people to make entries and paying them for doing so.” Do you remember making that statement to him? (After a pause.) Did you make this statement to Mr. Sharp: “At the time I made entry of the above-described tract of land, the following parties made timber and stone entries too Hal H. Wells, James T. Ball, Arthur Anderson, Abel Edward Hunter. The circumstances attending these entries and the manner in which they were made is exactly the same as mine. The aforesaid James T. Ball, Abel Edward Hunter, Hal H. Wells, and myself were together and received \$412.50 in each others presence from the said John I. Wells.” Do you remember making that statement? A. Yes, sir.

Q. Now all of these statements that I have read to you, purporting to be made by you to Louis L. Sharp, special agent of the land office, and which you have said you made, are true, are they?

(Testimony of Albert P. Nugent.)

A. Yes, sir.

Mr. KEIGWIN.—Q. Mr. Nugent, do you remember who were advertised as your final proof witnesses?

A. No, I don't remember positively.

Q. Do you remember who acted as witnesses for you on your final proof?

A. Not positively.

Q. Do you remember how you came to Boise on the occasion when you came here for the purpose of making final proof?

A. I believe I came down on the stage.

Q. Do you remember who came with you?

A. I don't remember exactly now; only Arthur Anderson, he was here or came down with me, I don't remember; he was here anyway, I don't remember.

Q. Do you remember anybody else who came with you or in your party or at about the same time?

A. No, I don't remember just exactly.

Q. Well, do you remember whether or not, when you reached Boise, all the witnesses that you needed were here?

A. Yes, I guess they was.

Q. Then there was no delay in making your proof on account of absence of witnesses, or on account of your inability to procure the attendance of witnesses?

A. I don't remember; I don't think there was.

Q. The reason for the delay in making your proof was that you couldn't get the money at that time?

A. Yes, sir.

(Testimony of Albert P. Nugent.)

Q. Mr. Wells or Mr. Kinkaid told you they couldn't get the money? A. Yes, sir.

Q. Which was it? A. It was Wells.

Q. He told you to say in your proof that the reason for the delay was that you couldn't get the witnesses? A. No, sir.

Q. Didn't you give that as a reason for the delay in making proof? A. No, sir.

Q. Don't you remember that it was necessary for you to file an affidavit on account of the delay in making your proof, and that you gave as a reason for the delay that you had been unable to procure the attendance of witnesses?

A. I don't remember.

Q. You don't remember that Mr. Wells told you that you had better say that the reason of the delay was that you couldn't get the witnesses?

A. I don't remember about that part of it.

Q. How near together are the tracts that were entered by you, and by Hal Wells, Anderson, and Ball? A. How close are they together?

Q. Yes. A. I don't know.

Q. Well, they are not far apart, are they?

A. I don't know.

Q. Do you know anything about the financial condition, at that time, of Mr. Anderson?

A. Well, I don't know exactly.

Q. You know what he was doing, don't you, for a living?

A. Yes, he was working for a living.

Q. What was he working at?

(Testimony of Albert P. Nugent.)

A. I believe he had a ditch leased, placer mining ditch leased.

Q. He wasn't working for wages, you think, at that time?

A. No, I guess not, just at that time.

Q. When he did work for wages, do you know what he got? A. No, I don't know.

Q. What are the usual wages?

A. Well, I don't know what he would get; the wages are about \$3 a day, or \$4 in a placer mine.

Q. Do you know anything about the financial condition of James T. Ball? A. Well, no.

Q. What was his occupation?

A. Well, I don't know; he did drive stage up there.

Q. When he didn't drive a stage, what was he?

A. Well, I don't know now what he did do, I am sure.

Q. Was he a common laborer, or a skilled laborer?

A. Well, I couldn't say as to that.

Q. Do you know anything about the financial condition of Hal Wells? A. No, sir.

Q. You had known this land for some time, I suppose. You had known for some time the land which you afterwards entered?

A. I had, yes, prior.

Q. Lived in the neighborhood of it?

A. Yes, sir.

Q. Been over it often?

A. No, not very often.

(Testimony of Albert P. Nugent.)

Q. But you knew the tract?

A. No, I know about where the tract was, I had been over the tract, but not to locate it as a timber claim.

Q. There was a large body of timber land up there at that time, was there not?

A. Yes, sir.

Q. It had only recently been surveyed or brought into market?

A. Yes, sir.

Q. And were there a great many entries before yours, do you know?

A. Well, according to the papers, there were quite a few.

Q. In that neighborhood?

A. Yes.

Q. Isn't it a fact that your entry, together with those of Wells, Anderson, and Ball were among the first that were made in that neighborhood?

A. Well, they possibly were.

Q. I show you a letter dated Boise, Idaho, December 26, 1902, addressed to yourself, purporting to be signed by John I. Wells, and ask you whether or not you received that letter?

A. Yes, sir.

Q. And is that the envelope in which it came?

A. Yes, sir.

Mr. KEIGWIN.—We offer this letter in evidence.

(Letter marked Plaintiff's Exhibit No. 140E.)

The letter reads:

“Boise, Idaho, December 26, 1902.

Mr. Bert Newgent,

Silver City.

Friend Bert: Yours of 21st at hand, and in reply

(Testimony of Albert P. Nugent.)

will say, I will know in a few days what to do in your timber claim. You will not have to come over if you get a lawyer here to look after it, until the date of trial. I will have my attorney look up the matter, and I think you had better have him to fight the thing for you. But I will stay by you in this matter and you will get your claim. I will let you know the steps to take in a day or two, so say nothing to no one and burn this letter. Wishing you a good Christmas and a happy New Year,

Your friend,

JOHN I. WELLS."

Did you know Frank Martin, the ex-Attorney General of Idaho? A. Yes, sir.

Q. Did he ever come to see you about this timber claim? A. No, sir.

Mr. KEIGWIN.—We wish to state, on behalf of the complainant, that we have made diligent search for the entry papers of this witness, but have thus far been unable to find them. It is our purpose to cause further search to be made at other places of possible deposit, and to produce these papers and offer them in evidence when they are found.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Nugent, where were you living in the fall of 1901, when you made this timber and stone entry? A. In the Boise Basin.

Q. What place? A. Centerville.

Q. How long had you lived there at that time?

A. About two years.

(Testimony of Albert P. Nugent.)

Q. What was your business?

A. I was mining, miner.

Q. And how long had you been engaged in that business in that vicinity?

A. About two years.

Q. Did you know John I. Wells?

A. Yes.

Q. How long had you known him?

A. About two years.

Q. What was his business during that time?

A. A miner.

Q. What capacity, what kind of mining work was he doing? A. Quartz mining.

Q. As owner or laborer? A. Laborer.

Q. Did you know Pat Downs at that time?

A. Shortly after that time.

Q. Did you know him at the time you filed?

A. Yes, sir.

Q. How long had you known him?

A. Possibly a month.

Q. What was his business?

A. I didn't know at that time.

Q. Did you know John Kinkaid at that time?

A. No, sir.

Q. Had you ever seen him up to that time?

A. No, sir.

Q. Did you know L. M. Pritchard at that time?

A. I don't know him now.

Q. Never knew him?

A. Never knew him.

Q. About when, with reference to the time you

(Testimony of Albert P. Nugent.)

made your filing, did the Government open the timber lands in the Boise Basin to entry?

A. I don't know.

Q. About how long before you made your filing had you heard of the fact that entries could be made?

A. I never heard of it until Mr. Wells—

Q. How long before you filed was that?

A. I don't remember.

Q. How many talks did you have with him prior to that? A. Several, I don't remember.

Q. Where was the first one?

A. The first one I remember of was coming down from the mine.

Q. Walking on the road? A. Yes, sir.

Q. He was working in the mine at that time?

A. I don't remember whether he was or not.

Q. You was working there? A. Yes, sir.

Q. You had worked with him in the same mine?

A. Yes, sir.

Q. Were you working in the same mine with him at that time? A. I don't remember.

Q. State that conversation fully, the first one you had?

A. Well, he wanted to know if I didn't want to take some timber land and sell the timber off of the land at fifty cents a thousand.

Q. At fifty cents a thousand?

A. Yes, sir.

Q. What did he say? Put that in his language, as near as you can.

(Testimony of Albert P. Nugent.)

A. Well, that's what he said.

Q. Put it in his language, as near as you can.

A. I have.

Q. He simply said to you, "Do you want to enter some timber land and sell the timber at fifty cents a thousand?"

A. Yes.

Q. And what did you say?

A. I told him that would be all right, that I would like to do that.

Q. Did you discuss with him at that time about how much it would amount to on a quarter section?

A. I don't remember whether I did or not.

Q. Did you at any time?

A. Possibly I may, but I don't remember.

Q. Let me refresh your recollection. Do you remember that you testified in the Borah trial in this case?

A. Yes, sir, I remember that.

Mr. KEIGWIN.—What page, Mr. Bundy?

Mr. BUNDY.—Beginning at page 60.

Mr. FRASER.—I don't know whether the same stenographer made these records.

Mr. BUNDY.—Q. Do you remember that at that time you testified as follows: "Q. Was there anything further said that you can recall at that time?

A. Something about fifty cents a thousand I would get for this timber land, and that was figured up at something like six or seven thousand dollars for the timber on a hundred and sixty acres."

A. I remember now.

Q. That refreshes your recollection?

A. Yes, sir.

(Testimony of Albert P. Nugent.)

Q. So that in the first talk you had with Mr. Wells on this subject, coming down from the mine, it was figured out that if people who would take timber claims would be able to make fifty cents a thousand feet from the sale of the timber they would probably net from six to seven thousand dollars each?

A. Yes, sir.

Q. And that was the proposition as it was first proposed to you? A. Yes, sir.

Q. And that was the proposition you had in your mind when you first took this matter under consideration? A. Yes, sir.

Q. Did you have any further talk with Mr. Wells with reference to how much a thousand you could get for the timber, up to the time you actually filed?

A. I don't remember of any; possibly we did, I don't remember.

Q. Did you have any further talks with Mr. Wells at all before you filed? A. Yes.

Q. State that other conversation, the next one you had after this first one, stating time and place and the substance of it.

A. I don't remember the time nor the place exactly, but I know I had some talks in regard to my—to the timber.

Q. Still discussing the proposition of selling the timber, as I understand it?

A. I don't remember in regard to that.

Q. Did you ever have any other change in the plans before you filed?

A. Yes, there was.

(Testimony of Albert P. Nugent.)

Q. Now the time he talked about the fifty cents a thousand proposition was how long before you filed? A. I couldn't tell you.

Q. Was that the time he told you he would locate you for \$20?

A. I don't remember whether it was or not.

Q. Did he afterwards tell you that it would cost you \$20 to be located?

A. I don't remember, but I know I give him \$20 to locate me.

Q. Do you recall having any conversation with him in which he told you that you would have to pay him \$20 to get the numbers and be located?

A. Yes, but I don't remember now what they were exactly.

Q. Don't you remember that you testified in the Borah trial that before you made your filing you had an agreement to pay him \$20, before you made your filing? A. Yes, sir.

Q. And you did pay that before you made your filing at all? A. Yes, sir.

Q. Now had you any talk with Mr. Wells as to the change in the plan, before you paid him the \$20? A. I don't remember exactly.

Q. Who did you give that \$20 to?

A. To Wells.

Q. And at the time you paid him the \$20 he gave you some numbers, did he not, a description of the land? A. Yes, sir.

Q. And you took those to Falk's store?

A. Yes, sir.

(Testimony of Albert P. Nugent.)

Q. Where Norman Young, as I understand it, was clerking? A. Yes, sir.

Q. Falk's store being in the city of Boise?

A. Yes, sir.

Q. So that you had come down here at that time for the express purpose of filing on this land?

A. Yes, sir.

Q. Now you came down with a hired team, as I understand? A. Yes, sir.

Q. Who paid for the team?

A. I paid my share.

Q. And you had then paid \$20?

A. Yes, sir.

Q. So then you went to the land office and paid whatever the law requires for filing fees and the publishing fee? A. Yes, sir.

Q. Now up to that time all the money you had invested was your own money? A. Yes, sir.

Q. And you had borrowed no money from anyone, nor made any arrangements with anybody for that particular money? A. No, sir.

Q. No suggestion was made with reference to money except that you would have to pay the requisite locating fee and the land office fees?

A. No, sir.

Q. All of which you understood at the time you filed? A. Yes, sir.

Q. Now at the time you filed, did you still contemplate selling the timber and holding the land?

A. I don't remember exactly, but I think not.

Q. Where did he give you the numbers or description?

(Testimony of Albert P. Nugent.)

A. I believe he gave them to me here in town; I don't remember whether he did or not; it might have been in Centerville.

Q. Didn't he give them to you in the saloon in Centerville? A. He might have, yes.

Q. Did you testify on the Borah trial that he gave them to you in the saloon at Centerville?

A. I don't know; I might have.

Q. Was this question asked you: "Where was he when he furnished you that (referring to the description of the land)?" A. In the saloon at Centerville."

A. Yes, that's right.

Q. That is right, is it? A. Yes, sir.

Q. You now recall that Mr. Wells gave you the numbers at Centerville? A. Yes, sir.

Q. Then you came down here with them?

A. Yes, sir.

Q. Did he tell you to go to Norman Young?

A. I believe he did.

Q. Didn't you testify in the Borah trial, and here this morning, that you went to Young because you had known him up there and you thought he knew more about it than you did? A. Yes, sir.

Q. And so you went to Young on your own suggestion? A. Yes, I believe that's right.

Q. So that at the time you filed down here, Mr. Wells wasn't here at all, making out your papers, or anything else?

A. Yes, he was here when we filed all right.

Q. Are you sure of that? A. Yes, sir.

(Testimony of Albert P. Nugent.)

Q. What mine were you working in at that time?

A. Why, I had been working in the Twin Sisters mine.

Q. Now after you had had this talk with Wells, which you have called the first one, when you talked about fifty cents a thousand for the timber, and the other conversation in which he told you that he would charge you \$20 for locating you, did you have any other conversations with him before the time that you filed here in the land office, with reference, I mean, to the timber, of course? A. Yes.

Q. When was that other conversation?

A. I don't remember the exact date.

Q. Where was it?

A. It was here in town.

Q. What place in town?

A. I don't remember just exactly where.

Q. Now state just what Mr. Wells said, and what you said, in that conversation.

A. Well, he said that if Mr. Garrett, the receiver in the land office, asked me questions in regard to where—this is my filing, is it?

Q. I am talking now about your filing.

A. Asked me what I intended to do with this timber land, and I told him I was going to sell wood and logs, and to that purpose.

Q. Mr. Wells told you to tell Garrett that you was going to sell the logs? A. Yes.

Q. And this was before you filed? A. Yes.

Q. Where was that conversation?

A. I don't remember; on the street, or some-

(Testimony of Albert P. Nugent.)

wheres here in town.

Q. Was that all that was said at that time?

A. Possibly lots of others, but I don't remember.

Q. Is that all that you can now remember?

A. That is all I can remember just now.

Q. That makes three conversations. Did you have any other conversation with Wells before you filed?

A. Yes, but I don't remember just exactly the substance.

Q. Do you remember what they were about?

A. I don't remember, no, just exactly.

Q. Can you give us the substance of what he said or you said? A. No, I don't remember.

Q. Have you now told us all of the conferences and conversations you had with Wells before you filed, that you can now remember?

A. Yes, that I remember now.

Q. Can you think of any other conversations or talks that you had with him? A. Not now.

Q. Before filing? A. No, sir.

Q. All the other talks you have testified about here this morning were subsequent to filing, after filing?

A. Yes, up to this time, I believe it is.

Q. What do you mean by that?

A. At the time we are talking about just now.

Q. I am asking you now, right this morning you have testified to a lot of conversation you had with Wells, and to a great many things Wells told you, some of which I assume, Mr. Nugent, were before

(Testimony of Albert P. Nugent.)

you filed, and some of which were after you filed.

A. Yes.

Q. Now, you have told me of three conversations you had with Wells before you filed. A. Yes.

Q. In the first one you discussed the six or seven thousand dollars which might be realized from the sale of the timber. A. Yes.

Q. The second was the conversation in which Wells told you the price you would have to pay to be located. A. Yes, sir.

Q. And the third one was the conversation you had somewhere on the streets here in Boise, when he told you to tell Mr. Garrett that you intended to log the timber and sell cordwood or logs.

A. Yes.

Q. Now my question is, did you have any other conversation, of any kind or character, with Wells, before you filed, that you can now remember?

A. No, not that I can remember now.

Q. And are all the other conversations and talks you had with Wells, about which you have testified here this morning, other than the three I have mentioned, talks that you had with him after filing and before or after final proof? A. Yes.

Q. So that the conversations you had with Mr. Wells prior to filing had covered such phases of the case as you have testified to in these three conversations. A. Yes, sir.

Q. Now didn't you testify in the Borah trial that you were first informed about the change in the plan by which you would have to sell the title rather than

(Testimony of Albert P. Nugent.)

the timber at or about the time you was going to make final proof? A. Yes, I believe so.

Q. And that is the situation, isn't it?

A. Yes.

Q. The first time you heard about selling out for \$650 was at the time that, or near the time that you was going to make final proof?

A. You are mistaken about the \$650; I don't remember anything about that.

Q. Don't you remember of going to Anderson and asking him if he wanted to sell for \$650?

A. I don't remember; I might have.

Q. Don't you remember that there was a proposition to sell these claims for \$650, as follows, Mr. Nugent, \$412.50 to be paid down at the time, with which money you would prove up, then \$137.50 more when the receipt was issued—that would make \$550—then the remaining \$100 to be paid when final receipt or patent was issued, which made the \$650. Now you was paid the \$412.50, with which to prove up? A. Yes.

Q. And you was paid \$137.50 when you took the temporary receipt to Mr. Kinkaid?

A. Yes, sir.

Q. Still leaving the other \$100, which you were to get when you got the final receipt, but no final receipt ever being issued you never got it.

A. Yes, sir.

Q. That was the arrangement, that the price for the claim, paid in these installments, was to amount to \$650? A. Yes, sir.

(Testimony of Albert P. Nugent.)

Q. Now, having your recollection refreshed by these figures, do you remember some proposition of that kind having been made to you, and you going to Arthur Anderson and asking him if he was willing to sell for \$650? Mr. Anderson testified to that, so I am asking you for your recollection.

A. I believe there was, but I ain't positive; I believe there was though.

Q. In any event, after the fifty cents a thousand for the timber had been abandoned, the next proposition you knew anything about was the \$650 proposition?

A. Yes.

Q. And the \$650 proposition was that that was the total amount, which was to be paid in installments?

A. Yes, sir.

Q. And that arrangement was made at or about a short time before you made your final proof, was it not?

A. Yes.

Q. Now, I think you said you came down from the Basin, had notice, did you, from the land office of your final proof?

A. Yes.

Q. And had you had some talk with Mr. Wells before that about it?

A. Before I come down?

Q. Yes.

A. I don't remember, I might have.

Q. You don't now recall any such?

A. No, I don't recall now.

Q. After you came down then, pursuant to the notice, you went to Mr. Wells, and was then the time that he told you, as you have testified, that there had been a change made and you would have to sell?

(Testimony of Albert P. Nugent.)

A. I don't remember whether it was right then or before; I don't remember.

Q. Let me see if I can refresh your recollection. In the Borah trial this question was asked you: "When had you first heard anything about that from either one of these men, Wells or Kinkaid? A.

That was after I came to Boise. Q. Before you proved up? A. Yes, sir, before I made final proof.

Q. Where were you when you made that arrangement? A. On the street, I believe. Q. Who

with? A. Wells, myself and Anderson. Q.

What did he say to you? A. Well, he said there was a little bit of a change in regard to the way this timber land would be disposed of, and simply turn the titles over that way. Q. And were you

to make a deed to anyone? A. No, I believe we signed an order for our patents, if I remember right." That refreshes your recollection, doesn't it,

Mr. Nugent? A. Yes, I remember now.

Q. So that you are now able to say, are you not, that the arrangement to sell for \$650 and be paid in the way I have specified, was made when you came down to Boise for the purpose of making final proof? A. Yes.

Q. So that this arrangement about which you have testified, by which you were to receive \$650 in installments, was not made until the time you came to Boise to make final proof. A. Yes.

Q. That is your best recollection?

A. That is my present recollection.

Q. Now, between the time you made your entry,

(Testimony of Albert P. Nugent.)

by which I mean your filing, and the time you came back to make your final proof, had you seen John I. Wells in regard to this matter at all?

A. Not to my recollection now.

Q. So that your recollection this morning is that you had the conversation with Wells about the fifty cents a thousand, you had the second one about the \$20 locating fee, you had the third one before filing, in which, he told you to tell Garrett you intended to cut wood.

A. Yes, sir.

Q. Then you had no further talk with him until after you had filed that you now can remember?

A. That I can remember now.

Q. And you had no further talk with him until you came down from the Basin to make final proof here in Boise, when you had the conversation I have referred to about the \$650 deal?

A. Yes, as near as I can remember.

Q. After you had made this arrangement, Mr. Wells paid you, on the day of your proof, \$412.50?

A. Yes, sir.

Q. And you took that money to the land office?

A. Yes, sir.

Q. And answered the requisite questions and made the final proof and paid in, as I understand it, that money.

A. Yes, sir.

Q. They issued to you then, did they not, what we call a temporary receipt, a receipt for the money?

A. Yes, I believe they did.

Q. And you took that receipt for the money to Mr. Kinkaid, at Mr. Wells' suggestion?

(Testimony of Albert P. Nugent.)

A. Yes, sir.

Q. And at that time Mr. Kinkaid paid you \$137.50, for which you admitted the receipt by the paper which has been shown you? A. Yes, sir.

Q. That made then, up to that time you had been paid \$550 on your claim, counting the \$412.50 and the \$137.50? A. Yes.

Q. Leaving still, according to your agreement, \$100 to be paid when title was perfected?

A. Yes, sir.

Q. Now, did you have any conversation with Wells at the time that he gave you the \$412.50 as to how you should testify before the land office, or do you recall that?

A. I don't recall it now, but I believe I did.

Q. What is your recollection of that conversation?

A. Well, I don't remember just now.

Q. Well, can't you recall anything he said to you about it that is of some importance?

A. When I made final proof?

Q. Well, at the time he gave you this \$412.50 to make final proof with, what conversation did you have with him?

A. Well, as near as I can remember, he gave me this money and told me that was the money to make final proof, and for me to go up and make the final proof.

Q. That is, as you recall, all the conversation you had with him, in substance?

A. That is as much as I can recall just now.

(Testimony of Albert P. Nugent.)

Q. Well, you did go and make final proof?

A. Yes, sir.

Q. And after you had made final proof and had turned over this final receipt, and had been paid all together \$412.50 plus \$137.50, making \$550, you heard nothing more of it until you were informed in some manner that a contest had been filed before the land office?

A. Sharp, I believe, is the man, as near as I remember.

Q. And Mr. Sharp came and called on you next?

A. Yes.

Q. Now, Mr. Nugent, when Mr. Sharp came to see you he told you, did he not, that it was a crime for anybody to enter a timber and stone claim and sell out before final proof had been made, or to that effect?

A. Yes, I believe he did.

Q. And that if you had done such a thing as that that you had made yourself liable under the law?

A. Yes.

Q. And he further stated to you, did he not, that if you would come out and tell the exact facts that you would be granted immunity from any punishment on the part of the United States?

A. Well, not exactly that way, but that was the substance of it, yes.

Q. Did you not testify on the Borah trial that Mr. Sharp, at the time he got your affidavit, promised immunity on the Government's part?

A. I believe so.

Q. And did you not also testify, and isn't it a

(Testimony of Albert P. Nugent.)

fact, that you made the affidavit for Mr. Sharp under an agreement with him that you would do what you could to rectify the wrong and tell all there was to it, and that the Government was not to prosecute you? A. Yes, sir.

Q. And that you would thereafter do whatever you could, as the Government wanted you to, in the matter of prosecuting these so-called timber frauds?

A. Yes, sir.

Q. And, acting under that agreement, you afterwards did, did you not, Mr. Nugent, file a sworn complaint against L. M. Pritchard, charging him with having defrauded the Government in these timber matters? A. Yes, I did.

Q. At that time you didn't know Mr. Pritchard, did you? A. No, sir.

Q. And you don't know him to-day, do you?

A. No, sir.

Q. And at that time you didn't know anything about Mr. Pritchard's connection with these cases?

A. No, only what I heard.

Q. But you signed the complaint at the request of Mr. Sharp, or some other Government representative? A. I don't remember.

Q. You don't remember whether it was Mr. Sharp or not? A. No, I don't.

Q. But it was some person who you understood represented the Government? A. Yes, sir.

Q. And requested you to sign this complaint, and you did so under this agreement you had with Mr. Sharp? A. Well, something to that effect.

(Testimony of Albert P. Nugent.)

Q. Then you gave Mr. Sharp the affidavit which has been offered in evidence here, and of which Mr. Gordon has read a copy of it to you?

A. Yes.

Q. That is dated the 21st day of June, 1902.

Mr. GORDON.—That hasn't been offered, but I will offer it.

Mr. BUNDY.—You read it to him.

Q. Now, this affidavit has been read over to you, Mr. Nugent, and you said you made the statements herein, and I have no doubt that is true. Did you have a conversation with Mr. Wells prior to the time you filed, in which Hunter was present?

A. Why, I possibly might have; I don't remember exactly now.

Q. Do you recall any such now?

A. I don't, not now.

Q. Who was Hunter, what was he?

A. He was a miner.

Q. Worked with you up there?

A. Well, not at the time I filed he didn't.

Q. How long before he filed had you been with him and associated with him?

A. Oh, a year or two, I suppose.

Q. Had you seen him oftener than that?

A. Yes.

Q. Had you had any conversation with him about this timber land, before you filed?

A. I don't remember; I possibly did.

Q. Can you recall any now? A. No.

Q. Did you have any talk with Hal Wells about

(Testimony of Albert P. Nugent.)

making this entry?

A. I possibly did, but I don't remember.

Q. And can you recall now any particular conversation you had with James Ball about making this entry? A. No.

Q. Did you have any conversation with these men, or the three of them, when you and John I. Wells and the other three were all present, did you ever have a meeting and discuss it?

A. I don't remember.

Q. Were you present when these three gentlemen I have named filed in the land office?

A. I don't remember; I believe I was.

Q. All of them?

A. Now, I don't remember, but I believe I was.

Q. Did you ever meet them together after you filed?

A. Possibly I did; I don't remember though just exactly.

Here an adjournment was taken until two o'clock, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. Albert P. Nugent resuming the witness stand for further cross-examination.

Mr. BUNDY.—Q. The question was, referring to Hal Wells, Ball, and others, if you had seen them together. A. I don't remember just now.

Q. This was before you filed. Did you ever at any time meet those three gentlemen, Messrs, Ball, Hunter, and Hal Wells, in connection with their entries, or your entry?

(Testimony of Albert P. Nugent.)

A. I possibly might have, but I don't remember.

Q. Did you ever have any conference with them relative to it, in the presence of John I. Wells?

A. I don't remember.

Q. Did they go down the same day you did? I think you said Anderson went down.

A. If I remember right; I don't remember exactly.

Q. Did you know, when you left the country up there to come down to file, that Ball and Hunter and Hal Wells had filed, or were going to file?

A. Well, if I remember right, that was the talk.

Q. Well, had you had any talk with them?

A. No, not recently, not that I remember of.

Q. So far as you personally were concerned, you didn't know anything about their filing?

A. Not positively, no.

Q. You had no talk with them?

A. I don't remember whether I did or not.

Q. You have now no recollection of having any talk with them or hearing them talk about it?

A. No.

Q. Did you make final proof with them, or any of them?

A. Why, if I remember right they were one of my witnesses, but I don't remember exactly.

Q. You don't remember which one?

A. No.

Q. At the time you went to John I. Wells and made this arrangement, by which he paid you in advance \$412.50 to prove up with, who was with you at

(Testimony of Albert P. Nugent.)

that time, besides Mr. Wells, I mean?

A. Well, I don't remember; I believe that Arthur Anderson was.

Q. Anyone else that you recall?

A. I don't remember now.

Q. Where was it that he gave you that money?

A. It was in one of the rooms in the Pacific Hotel.

Q. His room?

A. I suppose it was his room.

Q. And that is the time about which you have testified, when both you and Anderson were given \$412.50?

A. Yes.

Q. And you don't recall anyone else being present?

A. Well, I don't remember exactly, but possibly there was; I don't remember.

Q. Can you recall specifically whether John I. Wells' brother Hal Wells, was there at the Pacific Hotel when you got the money?

A. No; I won't say positively now; I don't remember exactly.

Q. You can remember; think a little.

A. I don't remember whether he was in the room or not; I remember he was down here.

Q. It was in a little bedroom, was it?

A. One of the rooms, yes.

Q. One of the sleeping-rooms?

A. Yes.

Q. It seems to me you can recall whether Hal Wells was there or not.

A. I don't remember.

Q. Do you remember whether Jim Ball was

(Testimony of Albert P. Nugent.)

there? A. No.

Q. Do you remember whether Abel Hunter was there?

A. No, I couldn't say that either.

Q. Can you say what is your best recollection?

A. I don't remember whether they were or not; that is my best recollection.

Q. You have no recollection on the subject at all?

A. I don't remember at all.

Q. Did you see them in the hotel?

A. I saw them on the street.

Q. You remember that?

A. Yes, I remember they was down.

Q. Did you see them at the land office?

A. I think they were one of my witnesses, I don't know.

Q. Which one? A. I don't know which one.

Q. But you can remember seeing them on the street? A. Yes.

Q. And have a faint recollection of seeing one of them in the land office?

A. I remember something about it.

Q. But you can't remember whether they were in the room or not when you got the money?

A. No, I don't.

Q. Had any of them suggested—any of these three men—going to Wells to get the money?

A. The understanding was that we was to get it when we come down.

Q. Did Ball tell you that?

A. I don't remember.

(Testimony of Albert P. Nugent.)

Q. Did Abel Hunter tell you that?

A. I don't remember.

Q. Did Hal Wells tell you that?

A. I don't remember.

Q. Who did tell you that?

A. There was nobody told me that except Wells when we come down.

Q. When did Wells tell you that?

A. As near as I remember, before this we knew we was going to get it, from the time we made the filing.

Q. How did you know that?

A. Wells told me that the money would be furnished.

Q. When did he tell you that?

A. Before we made final proof.

Q. In which of the conversations you have told us about this morning?

A. I don't know.

Q. Mr. Nugent, you told us this morning of three conversations you had before filing. You told us all that was said?

A. As far as I remember, I did.

Q. Do you remember some more?

A. I remember that was the understanding.

Q. Do you remember any other conversations?

A. I remember I had a conversation before, and—

Q. Have you had a talk with some gentleman since morning?

A. No, sir.

Q. Have you been up in the third story?

A. No, sir.

Q. I will go over it again with you. I don't care

(Testimony of Albert P. Nugent.)

for your understanding. I want the conversation. The first time you ever talked with Wells was walking down from the mine, when he asked you if you wanted to take a timber claim, and you discussed with him that the timber was worth fifty cents a thousand and would bring some six or seven thousand dollars, at that time. Was that correct?

A. Yes, sir.

Q. Was anything more said at that time?

A. Why, I don't remember.

Q. Can you now remember of anything more that was said at that time?

A. I don't remember.

Q. Then you told us the next conversation you had with Mr. Wells was a little later, when he told you it would cost you \$25 to locate you, and you agreed to pay it to him?

A. \$20, yes, sir.

Q. You remember that conversation, do you?

A. Yes.

Q. Was there anything more said at that time that you remember of?

A. Not that I remember of.

Q. Do you remember anything more than what I have stated?

A. Not that I remember.

Q. Then you said the next conversation you had with Mr. Wells was what? Let's see if you can tell. When was the next conversation you had with him?

A. Well, it was after we came downtown in regard to making final proof.

Q. After you came down to make final proof was the next conversation you had with him?

A. No, it was before, when we come down to file

(Testimony of Albert P. Nugent.)

we saw him and he told us how to file.

Q. And that was the time he told you, you told us to-day, to say that you were going to cut wood or logs on it? A. Yes.

Q. Can you remember anything more that was said in that conversation? A. No, I don't.

Q. Do you remember any other conversation you had before filing?

A. I don't remember what we said; I know we met several times, but I don't remember.

Q. Have you now told us again all the conversations that you can remember about now that you had with Wells before you filed? A. Yes, sir.

Q. And have you told us all you can now remember that was said between you and Mr. Wells at those conversations? A. Yes, sir.

Q. Mr. Nugent, you have been interviewed on this matter quite a number of times, haven't you?

A. Yes, quite a good many times.

Q. You have been before how many grand juries?

A. One and possibly two; that was a grand jury in the Borah trial?

Q. They were in session at that time, I think.

A. That must be two, I think.

Q. Then you were before a jury and testified on the witness-stand in the Borah trial? A. Yes.

Q. Was that the second or third time you had been in court?

A. Well, the Grand Jury I think was the third time; I am not sure.

Q. I think so. Then you testified in the contest

(Testimony of Albert P. Nugent.)

in the land office cases. A. Yes, sir.

Q. And then you gave Mr. Sharp this first interview we have heard about this morning.

A. Yes.

Q. Then you had several interviews with Mr. Ruick, or with his assistant, Mr. Johnson, in his room? A. Yes, sir.

Q. How many times have you been interviewed by the district attorney or his assistants?

A. Why, I don't remember now, once or twice, maybe.

Q. And how many times have you been interviewed since you have been here this time?

A. Not any.

Q. Not been in the rooms?

A. I have been in the rooms, but not interviewed on the subject.

Q. They haven't talked to you about it at all?

A. No, sir.

Q. So you have, all together, testified or been interviewed eight or ten times in this matter?

A. Yes, I guess so.

Q. Have you found it, Mr. Nugent, a little difficult to keep in your mind just the distinctions between what you personally know and what your impressions are, from grand jury indictments and newspaper reports and conversations, talks, and interviews, and suggestions, and so forth?

A. No; all I know is where I got the money, and I know what I done with it.

Q. The question is, are you not finding it a little

(Testimony of Albert P. Nugent.)

difficult to distinguish between inferences you have drawn from newspaper reports, inferences, suggestions, indictments, and so forth, and what you actually know of your own knowledge—a very natural difficulty, I think?

A. I find it hard to remember things that happened seven or eight or nine years ago.

Q. For instance, Mr. Nugent, I am assuming that you are trying to tell the truth—I have no reason to assume that you are not—in this affidavit you say that the circumstances attending the entries of Hal Wells, James T. Ball, and Abel Hunter, and the manner in which they were made, was exactly the same as your own.

A. Yes, but you know you just now said you didn't know whether that was the exact one or not; I may have made that remark.

Q. You testified to Mr. Gordon that you did.

A. As near as I remember, I believe I did.

Q. That statement, that their entries were made in the same manner as yours, was largely an inference, wasn't it, Mr. Nugent?

A. As far as I have proof, possibly it is.

Q. That is, you didn't know how they made their entries?

A. I didn't see them when they made it.

Q. And you didn't know whether they had any agreement, from hearing that agreement made?

A. Well, I don't remember.

Q. You have already testified here in answer to my questions that you hadn't talked this over with

(Testimony of Albert P. Nugent.)

these gentlemen, that you wasn't there when the money was paid.

A. I didn't see him pay the money to them.

Q. And you have testified that you didn't know under what conditions their agreement was made, from your own knowledge.

A. No.

Q. And that is true, isn't it?

A. Yes.

Q. So this statement, that they were made in the same manner as yours, is an inference you have drawn from the way in which your transaction was carried out, and you assumed that the rest were the same?

A. Yes, I guess so.

Q. And that has been suggested to you by the special agents, that they were all made in the same way?

A. No, I don't think so.

Q. Anyway, you told Mr. Sharp that on an inference you drew?

A. Yes.

Q. If that is true, Mr. Nugent, what did you mean by putting in this affidavit that that was true to your own personal knowledge? You state in this affidavit that these entries of Ball, Hunter, Wells, to your own personal knowledge, were made in exactly the same manner yours was made.

A. Possibly I believed they were at the time.

Q. You believed that you had personal knowledge at the time?

A. I believe I had, yes.

Q. What personal knowledge did you believe you had?

A. I don't know now; it has been so long ago.

Q. Have you now any personal knowledge of how their claims were made?

A. No, I have not.

(Testimony of Albert P. Nugent.)

Q. You didn't see the money paid to the other three gentlemen?

A. No, I didn't see him pay it.

Q. What did you mean in this affidavit when you said that the aforesaid James T. Ball, Abel Edward Hunter, and Hal H. Wells were together and received the \$412.50 in each others' presence from the said John I. Wells. What did you mean by making that kind of an affidavit, Mr. Nugent?

A. I don't know now.

Q. Mr. Nugent, you are a perjurer, aren't you?

A. Not that I know of.

Q. Didn't you testify in the Borah trial that you went before the land office and deliberately and intentionally perjured yourself?

A. I was told by John I. Wells to go ahead and do it.

Q. Didn't you testify in the Borah trial that you deliberately and intentionally perjured yourself before the land office?

A. I said John I. Wells told me to, all right.

Q. Was John I. Wells the keeper of your conscience?

A. No, but he influenced me then.

Q. Who influenced you in this affidavit,—Sharp?

A. He was there talking to me, yes.

Q. Who influenced you when you testified on the stand to-day that you had an agreement that you have testified about here, and then can't tell us a single word of the conversations constituting the agreement, who influenced you to do that?

A. No one.

(Testimony of Albert P. Nugent.)

Q. You testified to that of your own free will?

A. Yes, sir.

Q. That you had an agreement with Wells?

A. Yes, sir.

Q. But you can't remember the conversation that created it?

A. No, sir.

Q. Now, you knew at the time you talked about taking this timber land that the State was selling their timber for fifty cents an acre, at least it was talked between you.

A. Yes.

Q. And it was the fact that the State was selling for fifty cents that formed the basis of what you thought you ought to get out of it for the timber; that is the way you arrived at your first estimate of what you thought it ought to be worth?

A. Yes, sir.

Q. That is, you figured that there was so much timber on there, and it would net you fifty cents, and that would make six or seven thousand dollars?

A. Yes, sir.

Q. At the time you made the filing on this land you still thought in all probability that you would be able to sell the timber at the going price, did you not?

A. Yes, I thought so, I might.

Q. And it was some time after that, as you have testified this morning, when you came down to prove up, that you discovered that there wasn't any sale for timber, and you would have to sell it for less, or on a different plan, or else let it go?

A. Yes.

Q. Do you remember where you left Centerville that day, after your party was made up to come

(Testimony of Albert P. Nugent.)

down? A. No, I don't remember.

Q. Do you remember leaving there in Poncia's rig?
A. Yes, I remember now.

Q. Don't you remember now, Mr. Nugent, that you left the saloon there about the last place?

A. No, I don't remember that.

Q. Who was running the saloon there?

A. I don't remember now.

Q. Was Hal Wells running one?

A. I don't remember.

Q. Who did Hal Wells leave in charge of his saloon when he came down to make his filing?

A. I don't know that either.

Q. He came down the same day you did?

A. I believe he did, but he didn't come down in the same rig, I don't believe.

Q. Don't you recall that Hal Wells was down on the same day, and that John I. Wells stayed there and took care of the saloon while he came down?

A. No, I don't remember.

Q. Would you say that that is not true?

A. No, I don't remember, I say.

Q. Then you are not certain that John I. Wells was here at all on the day you filed?

A. I don't remember now.

Q. So, that at the time you made your original filing, you expected, did you not, Mr. Nugent, that you would be able to dispose of the timber on the land, retaining the title, for enough to pay all your expenses and a substantial profit besides?

A. That is on the timber?

(Testimony of Albert P. Nugent.)

Q. Yes. A. Yes, sir.

Q. And if there had been a market for the timber within the time before you proved up, that is the way you would have done it, if you could have found an opportunity to sell the timber? A. Yes.

Q. And that is really what you intended to do at the time you filed? A. Yes.

Q. And this other plan of selling out, which was ultimately adopted, was suggested to you or adopted by you after the time to prove up had about arrived, and you hadn't any money with which to make final proof? A. Yes.

Q. You came down that time, I believe, with some money, did you not, you had some money when you came down? A. To make the filing?

Q. No, when you came down to make final proof.

A. Yes, I had a very little.

Q. You had a little time with the boys here before? A. No, sir.

Q. What I am trying to get at here, Mr. Nugent, and I think you and I understand each other pretty well, with reference to this affidavit in which you testified to things you now can't remember, about personal knowledge and about these men all being present and receiving that money in each other's presence, and a good deal of your other evidence, seems to be partially based on conversations you are able to relate, and partially on something else. I assume you are trying to tell it as you think it is, and I want to ask you if it isn't true that after these timber and stone entries got to be common knowl-

(Testimony of Albert P. Nugent.)

edge, after there was a great deal of talk about it, and after it was general knowledge that John I. Wells had furnished money, by loans or otherwise, to men to prove up with, after all those things, if all those things combined haven't created an impression on your mind that that was the understanding from the start, and isn't that understanding based entirely upon what you afterwards discovered that Mr. Wells was doing with reference to these entries?

A. No, I don't think so; all I know is where I got my money.

Q. Yes, that part I haven't any doubt about, but I mean, at the time you made your entry, there is some evidence in here which I don't think you mean, to the effect that you had an understanding with Wells before you made your entry that he was to buy the land, and that isn't true, is it?

A. I don't understand you.

Q. At the time you made your original filing, the first time you filed, when you paid your \$20, at that time you didn't have any understanding with Wells that he was to buy this property, had you?

A. Certainly; I didn't have the money to make final proof.

Q. You didn't have any contract with Wells?

A. No contract, no; but there was an understanding.

Q. Isn't that understanding you are testifying about based upon what you have learned since, rather than anything that was said before?

A. No understanding? I knew I couldn't pos-

(Testimony of Albert P. Nugent.)

sibly prove up unless I got the money from someone.

Q. You knew John I. Wells didn't have it.

A. No, but he got it all the same.

Q. You don't mean to say, do you, that you expected you was going to sell out to John Wells, at the time you made that filing?

A. I didn't know who I was going to sell out to.

Q. Did he tell you?

A. No, but he said the money would be forthcoming, he would get the money.

Q. When did he tell you that?

A. I don't remember, but it was before the money would be furnished for me to make final proof.

Q. When did he tell you that?

A. I don't remember; it was before I made final proof, anyway.

Q. Mr. Nugent, I have gone over this thing three times with you, and I am going over it again. We don't want your evidence here of what your understanding is. What we want is what you said and what Wells said. I will give you another chance to tell the conversation in which Wells told you what you have now testified to. The first talk you had with Wells before filing was the one in which you and he figured out that there would be six or seven thousand dollars' worth of timber on the claim. Is that right? A. Yes.

Q. Did he say anything to you at that time to the effect that he or anybody else would furnish you the money to prove up if you took a timber claim?

A. If I remember right, he said it right then.

(Testimony of Albert P. Nugent.)

Q. Did he ever say it after that?

A. I suppose he did, but I don't remember.

Q. Can you remember that he did tell you that?

A. I know at the time I said, "I haven't got the money."

Q. So, that at that time you expected to sell for six or seven thousand dollars, and that is the time that Wells told you that the money to prove up with would be forthcoming? A. Yes.

Q. And you was to sell for \$412.50, or what?

A. No, the \$412.50 was to make final proof.

Q. I am talking about this first talk you had with Wells, when you expected to sell that timber for six or seven thousand dollars. A. Yes.

Q. Now, did you have any understanding with Wells then, or did Wells tell you, or had you agreed at that time, to sell this property to Wells?

A. No, sir.

Q. Had you agreed to sell it to anybody else?

A. No, he said the money would be coming to make final proof.

Q. Did you understand that was to be a sale or a loan?

A. No, I didn't understand it either way.

Q. At the time you filed on this timber land in question, filed your first papers, had you at that time entered into any kind of agreement, with any person, firm, or corporation, either in writing or oral, express or implied, by which you had agreed to turn over the title you might acquire from the Government to such person, firm, or corporation, or to any-

(Testimony of Albert P. Nugent.)

one that they would direct?

A. That is before I filed?

Q. Yes, at the time of filing.

A. Yes, I must have, because there had to be some kind of agreement before I could get this money to make final proof, as near as I can remember.

Q. You didn't get the money to make final proof till long after that. A. No.

Q. I am talking about the time you filed: Had you made any such agreement, and if so, with whom, and tell us about it.

A. I don't remember just now exactly; the understanding, as I remember, was that this money would be coming for me to make final proof.

Q. I am talking about the time you filed, paid your own filing fees in the land office, paid \$20 to be located, paid your share of the team that brought you here, now at that time, when you filed your papers in the land office, what did you expect to do with that timber?

A. I expected to sell it to somebody that Wells would have to buy it, that Wells would furnish to take it.

Q. When did you get that information?

A. Well, I don't remember just exactly; it was the time we came down, he said the money would be forthcoming for the final proof, and, of course, the people—that was the understanding—the people that were to put up this money would be the purchasers, I supposed.

Q. Tell us the conversation you had with Wells

(Testimony of Albert P. Nugent.)

in which you got that supposition.

A. I can't tell you word for word; I don't remember exactly.

Q. Tell us where it was.

A. I can't tell you that either; it was on the road from the mine.

Q. That was the day you walked on the road?

A. Yes, sir.

Q. Tell us what Mr. Wells said that gave you that impression.

A. He simply told me they would be—he said the money would be forthcoming to make final proof, and these people would take it.

Q. At the six or seven thousand dollar rate?

A. Yes.

Q. So that at that time you expected to get six or seven thousand dollars out of it?

A. Yes.

Q. And when you finally sold for six or seven hundred you wasn't very well pleased?

A. No.

Q. And as a matter of fact you have made repeated statements that you had it in for Mr. Wells on account of that, haven't you?

A. No, I never said I had it in for him.

Q. Mr. Nugent, you have testified here once to-day that the first talk you had with Wells about the \$412.50 was when you came down to make your final proof. Is that true or is it false?

A. Why, I don't remember. You ask me so many questions here that I don't remember one from

(Testimony of Albert P. Nugent.)

another.

Q. That's the reason I am asking them, so as to get you on every side of everything.

A. That's what I said this forenoon.

Q. Is that true?

A. As far as my remembrance at that time it is true.

Q. As far as your remembrance this forenoon?

A. Yes, sir.

Q. This afternoon you can remember better, can you? A. Yes.

Q. This afternoon it isn't true, you want to change it, do you?

A. Yes, you can if you want to.

Q. Do you want to change your evidence?

A. Yes, I will change it.

Q. You testified this morning to two or three conversations you had with Wells before filing, and in none of them, you said, you didn't have any talk about anyone furnishing you any money. You testified as you remembered it this morning, did you?

A. Yes.

Q. Do you want to change that now?

A. Yes, I will change that now.

Q. Is there anything else you have testified to that you want to change?

A. Not that I know of now.

Q. Do you want to change your evidence that you gave to Sharp in this affidavit, that Wells, Ball, and Hunter and you were all together and received the \$412.50 from Wells in each others presence? You

(Testimony of Albert P. Nugent.)

testified to that this morning. Do you want to change that now?

A. Well, why do you want me to change it?

Q. I don't want you to change it; I am asking you if you want to change it. Were you four gentlemen present and received that \$412.50 in each others presence?

A. Not the way I remember it now.

Q. So you want to change that now?

A. Yes.

Q. This morning you testified that the entries of Wells, Ball, and Hnuter, to your own personal knowledge, were made in exactly the same manner that yours was made. This afternoon you say you have no personal knowledge as to how their claims were made. Do you want to change that? A. Yes.

Q. Do you think of anything else that you want to change that you testified to falsely this morning?

A. Not that I remember of now.

Q. Let's see if I can't think of a few other things. When you sold out to Wells and he paid you \$412.50 advance money, and then \$137.50 more, you had no further interest in this claim except that you had \$100 more coming when final receipt was issued. That's right, isn't it? A. Yes.

Q. Then when you had notice that there was a threatened contest of some kind at the land office here, you didn't have any particular interest in the claim, did you, having sold out, except this \$100?

A. Yes, I didn't have any other interest.

Q. And you didn't think that that interest was

(Testimony of Albert P. Nugent.)

sufficiently valuable to go down there and make a fight for it?

A. Well, I knowed it was wrong, and I didn't want it then.

Q. You thought it was wrong because you had sold out before final receipt? A. Yes.

Q. And the Government had told you that it was wrong? A. Yes.

Q. And you still think it was wrong?

A. Yes.

Q. And that is the reason you have made these statements to them so as to show the manner in which you participated in the wrong? A. Yes.

Q. And your evidence to Sharp, and your evidence to the land office, and afterwards in the Borah trial, and here, is on the assumption that, having sold out before final receipt, you violated the law?

A. Yes, sir.

Q. And because of the promise the Government made to you of immunity if you would testify to those facts? A. Yes, sir.

Q. When you went before the land office and filed these papers, you testified, in answer to the questions required to be asked of you, Mr. Nugent, that at that time you had entered into no agreement of any kind or character, with any person, firm, or corporation, by which they had acquired, or did acquire, any right, title, or interest in the title you might acquire from the United States. Was that statement, at the time you made it, true or false?

A. It was false, undoubtedly.

(Testimony of Albert P. Nugent.)

Q. And you knew it was false?

A. Yes, to a certain extent.

Q. And you intended to testify falsely?

A. Why, I was told to do that way.

Q. You intended to do what you did do, didn't you?

A. I wouldn't have, if it hadn't been for someone telling me it was all right.

Q. Did you think that Mr. Wells knew it was all right?

A. I believed he did; I believed he was right; he said everybody was taking the land.

Q. Did you think at that time that it was all right to testify to what you knew to be false?

A. Yes.

Q. Are you still of that opinion?

A. No, I am not.

Q. When did you change your mind?

A. Not very long after that.

Q. Had you changed your mind when you swore to this affidavit for Sharp? A. Yes.

Q. You knew you testified to things in here that were false? A. Yes.

Q. And you intended to testify falsely to Sharp?

A. No.

Q. You did, didn't you?

A. My recollection wasn't clear there; I didn't remember just exactly as I should have.

Q. You knew what this affidavit was when you signed it and swore to it?

A. Well, I believe I did, at the time.

(Testimony of Albert P. Nugent.)

Q. And the statements in that affidavit are not true, are they, Mr. Nugent?

A. Well, that part where I saw Wells and Ball get the money, I don't remember that positively.

Q. You know it isn't true, don't you?

A. Yes, I don't remember seeing them get the money.

Q. So when you made your statement to Mr. Sharp you hadn't found out that it was wrong to testify falsely? A. No.

Mr. KEIGWIN.—What do you mean by saying that you hadn't found out that it was wrong to testify falsely? Do you mean that you intentionally misrepresented the facts to Mr. Sharp?

A. No, I didn't mean that.

Q. Did you understand in signing that affidavit—
Mr. BUNDY.—Let me ask him questions.

Mr. KEIGWIN.—Did you understand that was false when you said it to Mr. Sharp?

A. No, not then I didn't.

Mr. BUNDY.—Q. You can read, can't you?

A. Yes.

Q. And can you write? A. Yes.

Q. And when you said in this affidavit—you signed it and you read it over before you signed it, didn't you, or it was read over to you?

A. I believe so.

Q. And when it said in this affidavit that James T. Ball, Abel Edward Hunter, Hal H. Wells and myself were together and received the \$412.50 in each others presence from the said John I. Wells, you

(Testimony of Albert P. Nugent.)

knew that that was an absolute falsehood, didn't you?

A. Well, I made a mistake there; I didn't remember correctly.

Q. You knew it wasn't true, whether you intentionally made it or not?

A. I know it isn't true now.

Q. And you knew it wasn't true then?

A. No, I don't remember now.

Q. How have you found out since?

A. Well, after that I got to reading it over, and I remember thinking they were down here and supposed they took the land the same time I did, and I didn't remember them taking the money.

Q. Did you know it at that time?

A. No, I don't remember.

Q. So that you signed an affidavit which contained a statement which you now know, and knew then, wasn't true, just as you did before the land office?

A. I don't remember.

Q. Then when you went before the land office to make final proof they asked you certain questions, didn't they?

A. Yes.

Q. On December 10, 1901, when you came down, how did you expect to pay for this land?

A. That was when I made final proof?

Q. Yes.

A. With the money I would get from Wells.

Q. Did you expect to collect some money that was due you and use it for that purpose?

A. I don't know; no, I don't think so.

(Testimony of Albert P. Nugent.)

Q. Did you sign the affidavit I show you, dated December 10, 1901?

A. Yes, that is my signature.

Q. And swore to it before Mr. Garrett, the receiver?

A. Yes, I guess I did.

Q. In which you said: "Albert P. Nugent, being first duly sworn, deposes and says, that he is the identical Albert P. Nugent who made timber and stone sworn statement No. 225, on September 24, 1901, for the east half of the northeast quarter of section 15, southeast quarter of the southeast quarter of section 10, and the southwest quarter of the southwest quarter of section 11, township north range 5 east, on which final proof was advertised to be made on the 5th day of December, 1901, that he was unable to appear and offer proof on said day, or before this 10th day of December, 1901, because he was unable to collect money due him with which he expected to pay for this land, and furthermore, that he has been prevented from coming to the land office by a storm during the past two or three days.

ALBERT P. NUGENT.

Subscribed and sworn to before me this 10th day of December, 1901." Is that true or false?

A. It is false.

Q. You knew it was false when you made it?

A. Yes, sir.

Q. And you did it intentionally and deliberately?

A. John I. Wells incited me to do it.

Q. You did it intentionally and deliberately, knowing what was in it?

(Testimony of Albert P. Nugent.)

A. Through him, I did; he told me how to do it.

Q. Did you know what was in that affidavit when you signed it? A. Yes, sir.

Q. And you knew it was false? A. Yes.

Q. And you swore to it? A. Yes.

Q. And do you want to change that?

A. No.

Q. Is it true? A. No, it is not true.

Q. Do you want to change what you said in there?

A. No.

Q. Did you expect to pay for this land with money you was to collect? A. No.

Q. Do you want to change it?

A. No, I don't want to change it.

Q. You said in this affidavit that you expected to pay for that land with money that was due you.

A. But that was false.

Q. You want to change that evidence then, do you?

A. That is false, as I have told you already.

Q. When you made your final proof here you testified that you had your own money. A. Yes.

Q. And that was false? A. Yes.

Q. You knew it was false? A. Yes.

Q. And you testified falsely, knowing that fact?

A. Yes.

Q. Now that makes once you testified falsely when you filed your papers, testified falsely to all the questions asked you on final proof, testified falsely in the affidavit you made before Mr. Garrett, on December 10, 1901, testified falsely in the affidavit you

(Testimony of Albert P. Nugent.)

gave Mr. Sharp, on June 21st, testified falsely in five different parts of your evidence this morning that you have changed. A. Yes.

Q. Then I suppose, Mr. Nugent, that for the benefit of the court, you are entirely willing to admit on the stand here that you are and have been in this matter a perjurer and a man who will testify falsely.

A. Through John I. Wells I was.

Q. Now, didn't Mr. John I. Wells tell you, at the time he first spoke to you, that he had a concern, a lumber company, that he was acting for?

A. How?

Q. Didn't he tell you, the first time you talked with him, that he had a lumber company he was acting for?

A. No, I don't think he said a lumber company; no, I don't remember.

Q. Let me refresh your recollection. I don't think the Barber Lumber Company was organized at that time. Don't you remember that he told you something about Mr. Barber?

A. No, I don't remember now.

Q. Didn't he tell you who he was representing?

A. No.

Q. He told you he was representing somebody, didn't he? A. I forgot who that was.

Q. He mentioned some name, didn't he?

A. I don't remember now.

Q. Did he tell you that he was representing anybody? A. Not necessarily so.

Q. Did he?

(Testimony of Albert P. Nugent.)

A. I don't remember; he must have been, but I don't remember.

Q. You can't remember now whether he told you he was representing anybody or not?

A. No, I don't remember.

Q. So that, as far as you can remember now, the talk you had with Wells was simply Wells' statement, representing nobody.

A. Well, no, he didn't represent anybody.

Q. He didn't claim to?

A. No, I don't think so.

Q. Simply a statement to you that that timber was worth six or seven thousand dollars, and you could make some money by taking it, and that you would have to pay him \$20 for the numbers?

A. Yes.

Q. That is the substance of your first conversation?

A. Yes.

Q. And up until how long after you made your original filing, you never had any other agreement with him, except a promise that the money would be forthcoming? A. Yes.

Q. And that is the substance of your whole evidence here, isn't it, Mr. Nugent, that John I. Wells, a co-worker in the mines up here, who wasn't representing anybody so far as you know, told you that there was a chance to take a timber claim?

A. Yes.

Q. That the money to prove up would come from some place—he didn't say where—and that there

(Testimony of Albert P. Nugent.)

would be a nice profit in it? A. Yes.

Q. You do not think then that you had any other arrangement with him of any kind as to what should be done with this land? A. No, sir.

Q. So that any agreement that you had at the time you filed your first papers on this land was the inference which you drew from Mr. Wells' statement to you that there would be somebody to furnish the money? A. Yes.

Q. And it was based entirely on that?

A. Yes.

Q. And your evidence as to any prior agreement is all based on that inference which you drew from Mr. Wells' statement? A. Yes.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Nugent, when Mr. Sharp spoke to you about this matter and told you that you would not be prosecuted if you told the truth to him, did he suggest that you should testify falsely?

A. No, he said to tell the truth.

Q. Did he make any promise to you, or offer any inducement to you, to testify to any thing that was not true?

A. Well, he said that for me to come through and tell the truth as near as I could, and that the Government wouldn't do anything with me.

Q. I mean did he say he wanted you to make up something that was not true and tell it?

A. No.

Q. When you were talking with Mr. Sharp did

(Testimony of Albert P. Nugent.)

you have any motive for telling him anything that was not true? A. No, sir.

Q. Did you have any desire to deceive or mislead him in any way? A. No, sir.

Q. Did his promise to you influence your statements in any way?

A. I don't quite understand.

Q. I mean, did his promise to you influence you to tell him anything that was not true?

A. No, I don't think so.

Q. Then in making this affidavit, which has been shown to you, and which Mr. Bundy has read to you, and concerning which he has cross-examined you at some length, did you have—you know the affidavit I mean? A. No, I don't know.

Q. Meaning this affidavit, dated June 21, 1902, executed before Mr. Sharp, as special agent.

A. Yes.

Q. In making that affidavit did you have any purpose or intention to say anything that was not true? A. No, I didn't.

Q. Did you have any motive or disposition to say anything to Mr. Sharp which you did not believe to be true? A. No, I didn't.

Q. And in making this affidavit, did you, or did you not, believe that the statements made in there were true?

A. I thought they were true at the time.

Q. In regard to this statement that you went to John I. Wells' office and got this money in the presence of these other entrymen, Hal Wells, Ball,

(Testimony of Albert P. Nugent.)

Anderson, and Hunter, did you have any motive or reason or desire or disposition to impose upon Mr. Sharp? A. No, I didn't.

Q. Was there any reason why you should say that if you didn't believe at the time that it was true? A. No, no reason.

Q. Now, Mr. Nugent, have you, in your examination this morning, or your cross-examination this morning and this afternoon, intentionally said anything that was not true? A. No, sir.

Q. Have you had any desire or purpose to commit perjury? A. No, sir.

Q. Have you any motive or reason for deceiving Mr. Bundy? A. No, sir.

Q. Or Mr. Gordon and myself?

A. No, sir.

Q. Or the Court? A. No, sir.

Q. Mr. Bundy has asked you whether or not you are a perjurer. Have you ever committed perjury in any other transaction than this?

A. No, sir.

Q. Are you in the habit of swearing to things you don't believe to be true? A. No, sir.

Q. And this is the only transaction, I understand, in which you can tax your conscience with ever having said anything that was not true?

A. Yes, sir.

Q. When this Government proceeding was instituted against your entry and those of Wells, Anderson, Ball, and Hunter, the decision of the local land office was against the entries, was it not?

(Testimony of Albert P. Nugent.)

Mr. FRASER.—The records show that, and are the best evidence.

Mr. KEIGWIN.—This is preliminary to something else. Do you remember that the register and receiver recommended these entries for cancellation? A. No, I don't remember.

Q. Do you remember what the decision of the land office was? A. No, I don't remember.

Q. Did you authorize or request anybody to take an appeal to the Commissioner of the General Land Office for you? A. No, sir.

Q. Did you authorize anybody to take an appeal from the Commissioner of the land office to the Secretary of the Interior on your behalf?

A. No, sir.

Q. Did you ask anybody to represent you in the local land office in the first hearing, when the case was tried here? A. No, sir.

Q. How long have you known Mr. John I. Wells?

A. Well, I don't know exactly; it has been possibly ten or eleven or twelve years; I don't remember exactly.

Q. You had known him some time before you made this entry? A. Yes.

Q. Where did he live at that time?

A. Centerville.

Q. What was he doing?

A. Working in a mine some of the time.

Q. Anything else?

A. No, I don't remember just now.

Q. Didn't he tend bar in a saloon up there?

(Testimony of Albert P. Nugent.)

A. Well, he might have; I don't remember exactly.

Q. Was he working in the mines for wages, or was he carrying on mining operations on his own account?

A. At the mine where I worked, he was working for wages.

Q. How long was that before you made your application to enter this land?

A. I don't recollect; possibly five or six months before.

Q. Was he a man of means?

A. Well, I couldn't say; I don't know; he couldn't have been very rich or he wouldn't have been working for wages.

Q. Mr. Bundy has suggested that at that time Mr. Wells was as poor as you were. Was that the way you thought of him? A. Yes.

Q. You didn't regard yourself as a man of capital? A. No, sir.

Q. Did you have enough money to pay for this land, when you filed on it? A. No, sir.

Q. You didn't have \$400? A. No, sir.

Recross-examination.

(By Mr. FRASER.)

Q. Where did Mr. Sharp first meet you in regard to this matter?

A. At Warm Springs, below Idaho City.

Q. Did you know he was coming up to meet you?

A. No, sir.

Q. Who introduced you to Mr. Sharp?

(Testimony of Albert P. Nugent.)

A. He introduced himself.

Q. Tell you he was looking for you?

A. Why, he was looking for the entrymen, I believe, something like that; I don't remember.

Q. Did he tell you that you were one of the entrymen he was looking for?

A. Why, I believe he did; I ain't sure.

Q. Would you have made that affidavit for Mr. Sharp if he hadn't promised you immunity?

A. That's the way I understood it.

Q. Would you have signed any affidavit for Mr. Sharp until he first promised you immunity?

Mr. KEIGWIN.—Do you know what immunity means?

Mr. FRASER.—Q. Did Mr. Sharp promise that if you made a clean breast of it, the Government wouldn't prosecute you for what you had done in this matter? A. I don't quite understand now.

Q. You testified at the land office, didn't you, in this case, in the contest in the land office, didn't you testify? A. Yes.

Q. And you testified in the Borah trial?

A. Yes.

Q. Didn't you testify at both of those trials that Mr. Sharp had promised you immunity?

A. Yes.

Q. If he hadn't promised you immunity would you have signed that affidavit?

A. I don't know whether I would or not.

Q. You were protecting yourself, were you not, Mr. Nugent? A. I certainly was.

Q. And he told you that you were guilty of per-

(Testimony of Albert P. Nugent.)

jury, did he not, in making your filing?

A. Yes, sir.

Q. And then you made this affidavit and signed it? A. Yes, sir.

Q. Now how long after you signed this affidavit was it before you came down and gave your testimony in the land office, in the contest cases?

A. I don't remember now.

Q. Well, about, as near as you can recollect.

A. Oh, four or five months, or possibly longer; I don't remember.

Q. Had you, in the meantime, seen Wells, or Hunter, or Anderson, or any of these men that had filed with you, or about the same time you did?

A. If I did, I don't remember now.

Q. Did Sharp tell you that he was going to interview those fellows too in regard to their entries?

A. He might have; I don't remember now whether he did or not.

Q. Did he say anything to you at that time about the entries of anybody else except yourself?

A. Why, yes.

Q. What did he say?

A. He asked me about Hal Wells, and Arthur Anderson, and Ball and Hunter.

Q. Did you know these men? A. Yes.

Q. You knew them pretty well?

A. Well, I guess I did.

Q. On terms of friendship with them?

A. Yes, sir.

Q. For a number of years?

(Testimony of Albert P. Nugent.)

A. Not very many years.

Q. For awhile? A. Yes.

Q. And you deliberately made that affidavit that they made their entries in the same way you did, didn't you? A. Yes.

Q. Why did you want to say that against those entrymen unless it was true?

A. I was mistaken, that was all.

Q. And you put that mistake in and swore to it against these men that were friends of yours?

A. I was mistaken at the time.

Q. It's in there, isn't it?

A. Yes, it's in there.

Q. During those four or five months, did you ever tell any of these other entrymen that you had made this affidavit to Sharp? A. I don't remember.

Q. You never told them that you had confessed and made a statement?

A. No, I don't remember that I did.

Q. Do you think you did? What is your best recollection?

A. I don't remember; I have no recollection.

Q. Do you remember any one of those entrymen that you ever told that you had made a statement to Mr. Sharp, that you had told Sharp that their entries were illegal entries, in effect?

A. I don't remember now.

Q. Then the first that these other entrymen knew that you had made such a statement and turned State's evidence was when you came down to the land office, wasn't it, and gave your testimony?

(Testimony of Albert P. Nugent.)

A. I don't know; possibly it was.

Q. Now at the time, and up till the time you came to testify in the land office, these men had no reason to believe that you had made any statement to Sharp or anybody else, had they?

A. I don't know; they might have.

Q. I mean, as far as you know.

A. As far as I know.

Q. You hadn't informed them?

A. No; I might have, but I don't remember it.

Q. And this letter written about this contest was written in good faith, wasn't it, so that you could look after your own claim?

A. Possibly it was.

Q. After you made this affidavit and had been promised immunity you didn't care what became of your claim, did you? You wasn't going to contest it any further in the land office?

A. No, sir.

Q. And you had lost interest in it, hadn't you?

A. Yes.

Q. And you went to the land office and testified at the land office that the statements you made when you filed your application were false, did you not? Did you testify in the contest before the land office here that your answers which were given in your application to purchase were false?

A. Yes, I believe I did.

Q. And that your answers at the time you proved up were false?

A. Yes, I believe I did.

Q. Were you a witness for any other entryman? Were you a witness for Arthur Anderson?

(Testimony of Albert P. Nugent.)

A. Yes, sir.

Q. Didn't you testify for Arthur Anderson before the land office that his financial standing was good?

A. Yes.

Q. Was that true or false?

A. As far as I know, I didn't think it was; I think it was false.

Q. Was there anybody that induced you to swear falsely for Arthur Anderson?

A. Well, not that I know of.

Q. Didn't you testify as a witness for Arthur Anderson when he made his final proof that he got his money from placer mining by which to pay for the land?

A. I don't remember now; possibly I did.

Q. Well, if you did, was it true or false?

A. I don't remember about whether I did or not.

Q. What is your best recollection?

Mr. KEIGWIN.—I think you had better show him the papers.

Mr. FRASER.—Anderson's papers are in, and will show for themselves.

The EXAMINER.—The question as to whether, if he made this statement, it was true or false, is the same question precisely that Mr. Bundy objected to when propounded, but we ought to get through this examination some time.

Mr. FRASER.—Isn't it a fact that you swore falsely in the land office for the purpose of procuring \$250? A. Through John I. Wells, yes.

Q. And you made all these false statements for

(Testimony of Albert P. Nugent.)

the purpose of procuring \$250?

A. Through John I. Wells, yes, I did.

Q. Would you swear falsely now for \$250?

A. No, sir, I wouldn't.

Q. Have you reformed? A. I have.

Q. When?

A. Since I got into this trouble.

Q. Then if you testified in this affidavit, which you now say you did, before Sharp, and you say a part of that is false, in that affidavit, what was the consideration of that false testimony—the immunity which Sharp promised you?

Mr. KEIGWIN.—That question is objected to on the ground that it assumes that the witness testified falsely in the affidavit made before Mr. Sharp. The witness has not stated that he testified falsely in that affidavit, but has testified directly to the contrary.

Mr. BUNDY.—He has testified that two things in the affidavit were absolutely false.

Mr. KEIGWIN.—The witness has testified that there are two averments in this affidavit as to the truth of which he does not remember, and that his intention in making the affidavit was to tell no more than the truth.

Mr. FRASER.—Q. I think, Mr. Nugent, that I will ask you this question: Did you not testify for Mr. Bundy that this part of this affidavit was false, and I will read it: "And Hal H. Wells and myself were together and received \$412.50 each." Didn't you state to Mr. Bundy that that was false?

(Testimony of Albert P. Nugent.)

A. Yes, that was my knowledge at that time.

Q. It is false, isn't it? A. Yes.

Q. And what was the consideration for this false testimony in this affidavit? Was it the immunity which Sharp promised you? A. No, sir.

Q. What was it then?

A. It was a mistake on my part.

Q. All these false statements you made here in the land office were mistakes, were they?

A. Yes.

Q. Then every time you have made a false statement you claim that it was a mistake, do you?

A. No, it was through Wells that I made them.

Q. Was this through Wells, in the affidavit?

A. No, not that.

Q. Then this was a false statement made through Sharp, wasn't it?

A. No, not necessarily; it was my own statement. I remember we were all done talking about the matter before, and I just supposed that that was the case.

Mr. KEIGWIN.—I want to ask this witness one more question. Has anybody promised you \$250 or any other sum for testifying here to-day as you have? A. No, sir.

Mr. KEIGWIN.—Will you agree that this is a copy of the affidavit?

Mr. BUNDY.—Oh, sure.

Mr. KEIGWIN.—Counsel for the complainant offer in evidence a typewritten copy of an affidavit, purporting to be executed by Albert P. Nugent, be-

(Testimony of Albert P. Nugent.)

fore Louis L. Sharp, special agent, bearing date June 21, 1902, being the affidavit which has been several times exhibited to the witness Albert P. Nugent, concerning which he has been examined and cross-examined, and which it is stipulated is a true copy of the original affidavit executed at the time and place and in the manner indicated by the said copy.

(Marked Plaintiff's Exhibit No. 140F.)

(Witness excused.)

[Testimony of Arthur Anderson, on Behalf of the Complainant (Recalled).]

ARTHUR ANDERSON, recalled as a witness on behalf of the complainant, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Mr. Anderson, do you remember when you came down to Boise to make your final proof and saw Mr. Wells about getting the money for it?

A. Yes, sir.

Q. Do you remember where you saw Mr. Wells?

A. Saw him in the street some place; I don't remember exactly.

Q. Do you know where Mr. Wells got the money?

A. No, I do not.

Q. Do you remember seeing him go to John Kin-kaid's office and get the money?

A. No, sir.

Q. Did he have the money in his pocket?

A. Yes, sir.

(Testimony of Arthur Anderson.)

Q. And he gave it to you in the street?

A. No, he didn't give it to me in the street; he give it to me in an office in the Pacific Hotel.

Q. Was it an office on the first floor, or upstairs?

A. It was a step or two up.

Q. It was an office, was it? It wasn't a bedroom? A. Yes, sir.

Q. Was anybody else present when you got the money? A. No, sir.

Q. You were there by yourself?

A. Yes, sir.

Q. Was anybody else waiting in the neighborhood?

A. No, Albert Nugent went with me, but he went in ahead of me.

Q. Did he get his money first?

A. I think he did; I can't say, because I didn't see him.

Q. Then you went in after Nugent?

A. Yes, sir.

Q. What did Wells say to you about Nugent?

A. I don't remember him saying anything; I think he said, "You follow Nugent," he says, "and he will tell you where to go."

Q. Was anyone present when you got your money? A. No, sir.

Q. No one else in the room but you and Wells?

A. No, sir.

Q. Now, Mr. Anderson, do you remember having a conversation with John I. Wells, in which he said that you would get \$650 for your claim, before mak-

(Testimony of Arthur Anderson.)

ing final proof?

A. Well, I think he spoke of it once, but I can't tell exactly when it was, shortly before.

Q. Do you remember, shortly before you came down here to make final proof—

A. Oh, before I come down here?

Q. Yes. A. No, sir.

Q. That he told you you could have \$650 for your claim? A. No.

Q. When did you first learn that you would get \$650 for your claim?

A. I learned it from Albert Nugent.

Q. When did he tell you?

A. Well, he asked me if I wanted to sell my claim for that. He didn't tell me I would get it, but he said he could get that for it.

Q. What did you say?

A. I told him I wouldn't sell it for that.

Q. You told Nugent you wouldn't sell for that?

A. Yes.

Q. What did he say to you?

A. Well, I asked him if he was going to sell it and he said yes.

Q. Then did you agree to sell for \$650?

A. I didn't have no more conversation with him.

Q. When did Mr. Wells tell you that he would give you \$650 for it?

A. That I don't remember, when he told me.

Q. Do you remember that he did tell you that you would get \$650?

A. Well, I think he did; I don't exactly remem-

(Testimony of Arthur Anderson.)

ber whether he did or not.

Q. Were you willing to sell for \$650?

A. Well, when I come down here I was; I didn't come down though exactly with the intention to sell, because I thought if I didn't prove up, I could take up another claim, if I didn't prove up, and I asked Mr. Hawley about it.

Q. And he told you that you would lose your right if you proved up? A. Yes, sir.

Q. And then were you willing to sell for \$650?

A. Well, yes, I come to the conclusion that I would sell.

Q. Now, Mr. Anderson, don't you remember that Mr. Wells told you that you would have to take \$650 for the claim? A. That I had to take it?

Q. Yes.

A. No, he didn't say them words.

Q. What did he say?

A. Oh, well, he, when I saw him first and come down to prove up, "Well," he says, "did you come to the conclusion that you would prove up?" "Yes, I believe I will." And that is all we said, except that he said, "Well, I will have to rustle to get the money for you."

Q. Didn't he tell you that if you didn't want to sell for \$650 you needn't come down to prove up?

A. Yes, I believe he made that remark.

Q. You remember that? A. Yes.

Q. When was that?

A. I don't remember; it was some week or ten days before I got notice to prove up.

(Testimony of Arthur Anderson.)

Q. That was up in the country that he told you that?
A. I think it was.

Cross-examination.

(By Mr. BUNDY.)

Q. He told you, Mr. Anderson, didn't he, that that was all the claims were bringing then, \$650?

A. Yes, sir.

Q. And that if you proved up and wanted to sell now *they* was all you would be able to get out of it?
A. Yes, sir.

Q. At the time Mr. Sharp got this statement from you, you told us the other day that you and he had a little celebration that night?
A. Yes, sir.

Q. What time did you and Mr. Sharp commence that drinking business?

A. It must have been half-past eight or nine in the evening.

Q. When did you finish?

A. Some time about two o'clock in the morning.

Q. What were you drinking?

A. Whiskey punch.

Q. So by two o'clock in the morning both you and Sharp were in pretty good shape?

A. Yes, sir.

Q. And then you signed up the affidavit in the morning, was it?
A. Yes, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Anderson, was it two o'clock in the morning when you signed this affidavit?

(Testimony of Arthur Anderson.)

A. Yes, sir.

Q. You are sure of that?

A. I am sure of that; I am sure it was that late, it may have been a little later.

Q. Do you remember signing it?

A. Yes, I remember—well, not distinctly; I think he asked me to sign it, and I think I signed it; I ain't positive of it though.

Q. Where was this signed?

A. It was in Poncia's establishment.

Q. In the bar-room?

A. Well, in the bar-room and a kind of a store together.

Q. And it was two o'clock in the morning?

A. Yes, sir.

Q. And the bar-room was still open?

A. Oh, it kept open all night if there was anybody there.

Q. And other people were there?

A. No, sir.

Q. Nobody else there?

A. No, sir, nobody else.

Q. What became of Miss Clowry and Miss Poncia?

A. She was in bed and so was Mrs. Poncia.

Q. And you went up to their bedrooms?

A. No, Mr. Poncia called them up.

Q. And they got up and put on their clothes and came down there at two o'clock?

A. Yes, sir.

Q. You are sure of that?

(Testimony of Arthur Anderson.)

A. Well, I ain't positive they was in bed, but they was called in there.

Q. They were called from upstairs?

A. No, not from upstairs, because there ain't no upstairs.

Q. You don't know what time these ladies left this bar-room? A. No, sir.

Q. Had they been drinking with you?

A. No, sir.

Q. They were sitting around the bar-room in the early part of the evening, were they?

A. No, they were sitting in a sitting-room.

Q. You don't know what time they retired?

A. I don't know; they might have retired, as far as I know, about ten or eleven o'clock.

Q. Did you notice the clock?

A. No; of course, I missed them going back and forth.

Q. Did you have a watch? A. Yes.

Q. Did you look at your watch when the ladies went to bed?

A. No, sir, it didn't concern me any whether they went to bed or not.

Q. Did you look at your watch when you signed the affidavit?

A. No, there was a clock, Poncia has a clock.

Q. In the bar-room? A. Yes.

Q. Do you remember now whether it was two o'clock or later?

A. I ain't positive that it was two o'clock exactly, but it was in the neighborhood of that.

(Testimony of Arthur Anderson.)

Q. It might have been three, mightn't it?

A. I don't think it was quite that late, because I went home to my own place and had quite a sleep there before daylight.

(Witness excused.)

[Testimony of G. D. Hoseley, on Behalf of the Complainant.]

G. D. HOSELEY, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are G. D. Hoseley? A. Yes, sir.

Q. Where do you reside, Mr. Hoseley?

A. I am now here in Boise.

Q. Do you live here now?

A. No, not living—staying.

Q. And where did you reside in 1903, in the early part of 1903? A. I was in Wisconsin.

Q. What was your occupation at that time?

A. I worked in the lumber woods.

Q. Where? Employed by any lumber company at that time? A. Yes, sir.

Q. What company?

A. Williamson & Libby Lumber Company, of Osh Kosh, Wisconsin.

Q. How long had you been employed by that company? A. About two years.

Q. Where were you employed before that?

A. I was working for myself before that.

(Testimony of G. D. Hoseley.)

Q. Were you ever employed by the Northwestern Lumber Company?

A. Yes; not as a salaried man, just odd jobs.

Q. How long had you been employed by the Northwestern Lumber Company?

A. I think I had been working off and on with them for maybe fifteen or eighteen years.

Q. Who was the president of that company?

A. In the first place, Mr. D. R. Moon.

Q. Was he the father of Sumner G. Moon, the defendant mentioned here? A. Yes, sir.

Q. Do you know who succeeded Mr. D. R. Moon in the presidency of that company?

A. Mr. James T. Barber.

Q. Of Eau Claire, Wisconsin, another of the defendants in this suit? A. Yes, sir.

Q. I understood you to say you hadn't been working for the Northwestern Lumber Company for two or three years.

A. Or several years, I hadn't worked direct, but I had worked for the Montreal, a branch of the Northwestern.

Q. Do you remember the occasion of your first visit to Boise, Idaho? A. Yes, sir.

Q. When did you first come to Idaho?

A. In July, 1903.

Q. State how you happened to come to Idaho.

A. I come by the request of Mr. Barber.

Q. Mr. James T. Barber? A. Yes, sir.

Q. Now what did Mr. Barber say to you about coming?

(Testimony of G. D. Hoseley.)

A. Well, he said he would like to have me come out and look over the country, and see what I thought of it.

Q. And were you to be paid for that?

A. No, sir, he said he would pay my expenses, but he wouldn't give me anything for coming, because it would be a good trip for me.

Q. Do you remember when you left your home in Wisconsin to come to Idaho on that occasion?

A. Yes.

Q. When was it?

A. It was in July, I don't remember just the time in July, but I judge probably about the middle of July, maybe a little before.

Q. And you came directly to Boise?

A. Yes, sir.

Q. Did you have any letters to introduce you to anyone here?

A. No, sir.

Q. Did you come alone, or with some one?

A. I came alone.

Q. Whom did you meet when you arrived here?

A. I didn't meet anybody; there was nobody here.

Q. Were you just to come to look around Boise, or what were you to do?

A. No, I was waiting; Mr. Barber was to come.

Q. And how long after your arrival here did Mr. Barber come?

A. I think about two days.

Q. And you then had a conference with him?

A. Well, yes, not much of a conference either.

(Testimony of G. D. Hoseley.)

Q. Did you meet Governor Frank Steunenberg?

A. Yes, after he came I met him.

Q. Did Mr. Barber introduce you to him?

A. I think so; I don't remember about that, but I think so.

Q. Now after you met Mr. Barber and Governor Steunenberg at Boise did you receive any instructions as to where you were to go, or what part of the country you were to look over? A. Yes.

Q. And what were your instructions?

A. I was to go up throug the Basin country, and up to Kempner's, Crooked River.

Q. Were you to go alone, or was someone to go with you?

A. No, they said there would be a man to go with me.

Q. Did they find a man to go with you?

A. Yes, sir.

Q. Who was that man? A. Mr. Downs.

Q. Mr. Patrick Downs? A. Yes, sir.

Q. And where did you go?

A. Went up through the Basin and up to Kempner's.

Q. And do you remember what townships you went over?

A. Well, I know we went through towns 6-7—I don't remember, but I know since that that was the town we went through—and some, I think, in 6-5; went up through by Idaho City; I don't remember now, went up the main road anyway.

Q. Did you go up on Grimes creek?

(Testimony of G. D. Hoseley.)

A. No, I didn't go on Grimes creek that trip.

Q. What were you to report on?

A. Well, on the quality of the timber, and partly on the quantity, and the feasibility of logging it and driving it.

Q. Did Mr. Barber tell you how much timber he or his company owned in Idaho at that time?

A. I don't think so, not at that time, no.

Q. And how long were you up in the woods?

A. Well, I think we was a day or two at Kempner's before Mr. Barber came, looking around there.

Q. Then did Mr. Barber meet you at Kempner's?

A. He came to Kempner's, yes.

Q. And did he go over the land with you?

A. No.

Q. Did he give you any further instructions then?

A. Well, he said we had better go down the Crooked River, and down the north fork, and down the main river, to see what I thought of that country.

Q. And you did that? A. Yes.

Q. And did he wait at Kempner's till you reported to him, or did he return to Boise?

A. He returned to Boise.

Q. And when did you see him again?

A. Well, when I got back and came to Boise.

Q. And you made a report to him on the quantity and quality of the timber?

A. Well, in regard to quantity, I looked over some of the timber, but I didn't have much time to

(Testimony of G. D. Hoseley.)

look over the timber; it was more on the feasibility of the driving proposition and the logging.

Q. Then do you remember when you went back to Wisconsin?

A. Yes, I went back in August, first, along about the first of August.

Q. And after you returned to your home in Wisconsin did you receive any communication from Mr. Barber or Mr. Moon with reference to further employment?

A. Not about any employment; I received a letter from Mr. Barber saying that he would like to have me come to Eau Claire.

Q. Did you receive one from Mr. Moon before that?

A. I never knew Mr. Moon.

Q. And you received a letter from Mr. Barber telling you to come to Eau Claire.

A. Yes, sir.

Q. Did you go?

A. Yes, sir.

Q. Do you remember when it was that you went there?

A. Well, it might be, the first trip, I think probably it must have been along about the last of August; I can't tell exactly.

Q. And what did Mr. Barber want with you?

A. He wanted me to come out, as a salaried man, to Idaho.

Q. Tell all you can that happened after that.

A. Well, he said that he would like to have me go out there and take hold of the logging and driving for them, and we argued the case about salary

(Testimony of G. D. Hoseley.)

and one thing and another, and I think, if I remember right, that I told him I would go home and take it up with my wife, and I think that is what we agreed on, but I believe I was to go back again to give him his final answer and decide.

Q. And you did go back, and you gave him a final answer, and then you left for Boise?

A. Well, not just then; then I went back home and packed my goods and things and started as quick as I could.

Q. When did you arrive at Boise?

A. On the 21st day, I think, of September.

Q. And do you remember what day you left Wisconsin to come here?

A. Well, I think I was a little better than four days on the road; I must have left about the 16th or 17th, Nealsville.

Q. And when did your salary begin, as an employee of the Barber Lumber Company—before you arrived here or after?

A. I think it started from the day I arrived here, on the 21st, if I remember right.

Q. I will ask you, after you had your talk with Mr. Barber relative to what your salary should be you then went to your home, and came from your home down here; is that correct?

A. Yes, when I give him the decided answer, and went back, and I think we talked it over; I wasn't there only between trains, then I came back to Nealsville and packed as quick as I could and got a car and came on through.

(Testimony of G. D. Hoseley.)

Q. And you didn't see Mr. Barber again after that conversation, before you left your home to come to Boise? A. No, sir.

Q. And do you remember how many days you were in packing, and in getting your car and getting ready to leave?

A. Oh, no, I can't say, but I should say that I was about—I done it very quick; I don't think it would exceed four days.

Q. Wasn't it a week or ten days?

A. Well, it might have been, only it don't seem to me it was that long; I couldn't say; I got here as quick as I could anyway.

Q. Do you remember, in your talk with Mr. Barber, before you left Wisconsin, of him telling you how many million feet of timber they had in Idaho at that time?

A. Well, I don't remember about him saying how many; he either said it or read it, about the approximate amount.

Q. And how much was that?

A. It was about five hundred million, if I remember right.

Q. And you came down here and reported that there was about five hundred and fifty million?

A. I think after I got here and looked the country over, I raised the estimate; I think that was my report; I don't remember just what the report was.

Q. Now one of the times that you saw Mr. Barber before leaving Wisconsin, he gave you this book that I hold in my hand, did he?

(Testimony of G. D. Hoseley.)

A. I guess so; let me see. (Witness takes book.) Yes, sir, he handed me the book; that was the last time I saw him.

Q. And what was that book supposed to contain?

A. Supposed to contain the Barber lands.

Q. And it was supposed to contain the lands that you were to work over in Idaho?

A. I suppose, yes, and log over.

Q. And how long did you work for the Barber Lumber Company?

A. I think it was the 21st day my time started, in September, 1903, and I believe that I settled up with Mr. Chapman on the 1st day of June the year following.

Q. The year following or two years following?

A. The year following.

Q. And that book that you have just identified was to be your guide and chart of the property of the Barber Lumber Company that you were to work over?

A. Well, that was the book I had, yes.

Q. That is the only book you had, wasn't it?

A. Yes; sometimes I had plots and things, but that was the book I carried in my pocket.

Q. Now I notice that there are a great many plats of townships in this book; each page represents a township, and there are a number of different marks in the sections in these various townships. I will ask you whether or not, after looking through that book, you will state that the marks, checks,

(Testimony of G. D. Hoseley.)

and dots in those various sections in the townships, in red ink, were in that book when you received it?

A. The V's, if I remember right, was, if I remember right, was lands owned by the Barber Lumber Company.

Q. What about the others?

A. Well, the others—

Q. The V's are the red ink marks?

A. There are other marks there besides the V's.

Q. Now, I will ask you about the marks in 6-4, in red ink; were they in there when you left Wisconsin? A. I don't believe they were.

Q. Who put those marks in red ink in 6-4 in that book? A. That I can't say, Mr. Gordon.

Q. Did you put them in there?

A. No, sir, I can't say who put them in there.

Q. You carried that book with you all the time, didn't you?

A. Oh, generally speaking, I don't suppose I ever made a trip that I didn't have my book with me.

Q. Didn't you keep that book with you all the time?

A. Oh, speaking generally, I guess I did; there was lots of times when things came up that I took the book to the office, and you know how a fellow does, I threw it on the table.

Q. And did anybody explain to you, after you came from Wisconsin, that they had put those marks in red ink, or those dots, in 6-4, in that book, on page number seven, and why they put them in there?

A. Not that I remember of, Mr. Gordon.

(Testimony of G. D. Hoseley.)

Q. Now these pencil marks on page six of this book, I will ask you who put them in the book?

A. I think I done that.

Q. I will ask you who put the pencil marks on page seven of that book?

A. The dark pencil marks, I think I done that, the black pencil marks, I think I done that, Mr. Gordon.

Q. Now, the letter S in various places, who put them in there? A. I think I did.

Q. And what does S mean?

A. That meant good enough for scrip.

Q. Now there is an O there.

A. That was rejected, I didn't think there was enough timber to warrant.

Q. That meant out? A. Yes.

Q. I will ask you—there are some cross-marks in pencil on page eight, and I will ask you who put them in there.

A. I don't think I done that, Mr. Gordon.

Q. Who did that?

A. That I couldn't say, but that looks to me like Mr. Chapman's work.

Q. I show you the dots in blue pencil on page number nine, and ask you who put those dots on that page.

A. That would look like some of my work, but there is no town arranged, so I can't connect that with anything, so I don't know what it means.

Q. I show you, on page twelve, some O's and a number of V's in lead pencil. Who put them in there?

(Testimony of G. D. Hoseley.)

A. Well, sir, I don't believe I done that either, the O's I think I did, but the V's I don't think I did.

Q. I show you, on page thirteen, a number of S's and O's. Who put them in?

A. I think that is my work; I think that was the 40's that I put scrip onto, and the O's was what I rejected.

Q. And the V's in red ink was in there?

A. Yes, them was in, for that was supposed to be the Barber holdings, in 7-5.

Q. What is there that makes you recollect that those marks were there when you started, and you don't know whether those in 6-4 in red ink dots were there? A. I don't think they were.

Q. What makes you think that they were not?

A. I think they was lands that had been either filed on or not proved up on, or something to that effect. I don't think Mr. Moon put anything into the book only what he owned.

Q. But you don't know whether those marks were put in there to indicate that there had been filings made on it? A. I do not know.

Q. Did you ever do any cruising in 6-4?

A. Yes, I was in there a great many times, yes.

Q. I show you page fourteen in this book, and show you a number of V's there, these V's being in red ink, and ask you if they were in the book when you left Eau Claire. A. I think they were.

Q. And they also indicated the holdings of the Barber Lumber Company?

A. I think they did.

(Testimony of G. D. Hoseley.)

Q. I show you page number nineteen, that has a number of V's in red ink, and ask you if those V's were in there when you left Wisconsin?

A. I think they were.

Q. And they also indicated the property that was owned by the Barber holdings? A. Yes, sir.

Q. On page twenty there are a number of other V's in red ink, and they were there when you left Wisconsin? A. I think they were.

Q. And they indicate also that they were owned by the Barber people? A. Yes, sir.

Q. I show you page number thirty, that has a number of V's in red ink, and a number of dots in red ink, and I ask you if they were in that book.

A. I think the V's were there; I am satisfied they were.

Q. How about the dots?

A. That's fixed like it was with the rest of it, I don't think Barber had any interest in it whatever, it was lands that he might buy maybe after they made final proof or got it.

Q. That was your understanding.

A. I think, if I remember right, as I would go by one of them and run by it I would kind of note how much timber there would be on it.

Q. With the view of perchance buying the lands?

A. After there was final proof made on it.

Q. Is that your understanding of the dots in 6-4 also?

A. That is my best recollection, that the Barber Company didn't own it.

(Testimony of G. D. Hoseley.)

Q. And for you to look over it with the purpose of seeing whether or not it was good, and if they had a chance to buy it subsequently they would buy it?

A. I think so, yes, sir.

Q. Now, on page thirty-one I find some more V's in red ink. They were in there when you left Eau Claire? A. I am satisfied they were.

Q. And they also indicate the holdings of the Barber people? A. Yes, sir.

Q. I show you page forty, and you see the V's in there in red ink.

A. Yes, but there is where I get my inference from; there is a claim I took up and proved up on it, and still held it a long time after I left the Barber Lumber Company, and that is marked the same.

Q. Did you put those marks in there?

A. No, they were put in there after I came here.

Q. And that would indicate lands that the Barber Lumber Company would buy if it was good?

A. That's what I think.

Q. And that is what is indicated by the dots found in the book? A. Yes, sir.

Q. Were these dots in the book when you got it?

A. No, I don't think they were.

Q. Did I understand you to say that each one of those dots that you found in the book indicated to your mind that it was property that they would buy if they could get it, if it had good timber on it?

A. I said so, but not that they were in the book when I left Eau Claire; they were put in since I came here.

(Testimony of G. D. Hoseley.)

Q. I show you page forty-one, and ask you if the V's on that page in red ink were in this book when you received it from Mr. Barber, in Wisconsin, and what they indicate to you.

A. Barber holdings.

Q. What do the lead pencil marks on that page indicate? A. They indicate scrip.

Q. Now which of them indicate scrip? S indicates what? A. That would be the scrip.

Q. And they are in lead pencil?

A. Yes, sir.

Q. And you put them in there yourself?

A. Yes, sir.

Q. And the O's in there on that page?

A. That was property that I rejected.

Q. And you put them in there?

A. Yes, sir.

Q. I find some X's on that page. What does that mean—in lead pencil?

A. That would be scrip.

Q. X means scrip too?

A. Yes, that there would be scrip, but it was a different proposition there; there was a proposition there to scrip for a dam site.

Q. I show you page forty-two, a number of V's on that page in the book, and ask you if they were in the book when you received it in Wisconsin.

A. Yes, sir.

Q. And they also indicate the holdings of the Barber people? A. Yes, sir.

Q. I show you some V's on page forty-six.

(Testimony of G. D. Hoseley.)

Were they in the book when you received it?

A. I am satisfied they were.

Q. And they also indicate the property or holdings of the Barber Lumber Company?

A. Yes, sir.

Q. Now as to page forty-seven, the V's there in red ink were in the book, as I understand it, when you received it, and they also indicate the holdings of the Barber people?

A. Yes, sir.

Q. Now, I notice that there is an index on the first page of the book, and I will ask you if that index was in there when it was given to you.

A. Yes, sir.

Q. And the book was paged in red ink as it is now when you received it?

A. Yes, sir.

Q. You remember testifying in the Borah trial, don't you, Mr. Hoseley?

A. I do.

Q. Now, for the purpose of refreshing your recollection, I will read you several questions and ask you if you remember the questions being asked you and whether or not you made the answers:

“Q. And you have had that book in your possession since, until you turned it over to the Government officers, have you? (The context of what went before shows that it had reference to September 10, 1903, the date fixed that you must have left Wisconsin.) A. Yes, sir, it has been in my possession generally; yes, I have had it all the time.”

A. Well, generally, I mean, as I say, I kept the book with me; lots of times I would throw the book down. Generally it had been in my possession.

(Testimony of G. D. Hoseley.)

Q. That was a book just purely for your guidance, wasn't it? A. Yes.

Q. And did anyone have any object in putting information in that book without explaining to you what it was put in there for?

A. They might explain it, but still I might not remember it; I can't remember so long; there is a great many things, you know.

Q. Do you remember this question being asked you at the Borah trial: "Q. And this was the only memorandum book that Mr. Barber handed you at that time? A. Yes, sir." Do you remember that question being asked you? A. Yes, sir.

Q. And you made that reply? A. Yes, sir.

Q. "Now the townships at the headings of these pages, 5-4's and 6-4's, they were indicated to you or filled out when it was handed to you? A. Well, there was some marks in it, but I didn't know anything about it at that time." Was that question asked you and that answer made by you?

A. I think it was.

Q. "Q. You didn't put any red marks here? A. No."

A. I think there is an exception there; I think I did mark some K's there; it looks like my work.

Q. "Q. Then there were also some marks in this book to indicate the divisions and subdivisions of the land, were there not? A. Well, that I can't say, whether they were in there or not." Is that right?

A. Yes, I couldn't say.

Q. "Q. Were there not some red marks there?

(Testimony of G. D. Hoseley.)

A. Oh, yes, but there was two kinds of red marks here, and I don't know whether they were all here or not." Is that the answer you made?

A. I think that is the answer made.

Q. "Q. Did you ever make any kind of red marks in this book? A. I don't believe I did, without it was the 4's I made in that book, they may be in that book." Is that right?

A. I don't remember about that; it seems to me it was M's they drew my attention to.

Q. "Those are the only ones you made? A. Yes, sir." Is that right? A. Yes, sir.

Q. "Q. I call your attention to plat township 6-4; you made some pencil marks on there, did you? A. Yes, sir." Is that right? A. Yes, sir.

Q. "Q. Did you make the blue mark running around on there, or was that made when it was handed to you? A. Well, I don't know about that, and about the black mark, but the S marks I made."

A. Yes.

Q. "Q. Now, the little red dashes that were made in there, you didn't make those?

A. No, sir.

Q. You made that reply to that question?

A. Yes, sir.

Q. "Q. And you did not make the 6's nor the 4's? A. No, sir." That is referring to 6-4. "Q. Now, you don't know of any in 6-4 being made after you left Wisconsin, do you? A. No, sir."

A. That's what I said; I don't remember, because I don't know.

(Testimony of G. D. Hoseley.)

Q. "Q. Or after your arrival? A. Not to the best of my knowledge."

A. Well, I don't know.

Q. I mean, Mr. Hoseley, was that question asked you and did you make that answer: "Q. Or after your arrival here? A. Not to the best of my knowledge." A. Not to my knowledge.

Q. I mean, you made that answer, did you, at the Borah trial?

A. Yes, I believe I did at the Borah trial.

Q. "Q. Now, do you know of any red marks having been made in 6-5 east by you before you left Wisconsin? A. I don't know that they were there." Did you make that answer?

A. I don't remember that question, but I probably did.

Q. "Q. Different marks in there they indicate different lands? A. I don't know that; they was not made after I came here." (That is referring to 6-5 east.) A. I don't understand that.

Q. Do you remember that question being asked you? A. No, I do not.

Q. "Q. Now, you say you have had this book in your possession, do you? A. I have." Do you remember that question? A. I think I do.

Q. "Q. And you have had this book to refresh your mind to indicate certain lands, have you not? A. Why, yes, of course."

A. Yes, I remember that question.

Q. "Q. Whose lands were those? A. The Barber Lumber Company." That question was

(Testimony of G. D. Hoseley.)

asked you and you made that answer?

A. Well, if I made that answer, they ain't; not all the marks that was in that book was Barber Lumber Company land; now, if that's what it is, I didn't state it right, because there's lots of marks in that book that ain't Barber Lumber Company lands and never was; I didn't understand that, Mr. Gordon, if that was the question.

Q. If you made that answer you had reference to what?

A. I had reference to the V's, that's a sure thing.

Q. And you didn't know about the red dots?

A. No, I am satisfied, just as I told you, that there was lands that they didn't own, or didn't own for years afterwards, with red dots.

Q. "And you didn't know of any of their lands except what Mr. Barber or some member of the corporation indicated to you, did you? A. I knew of lots of lands, but I supposed— (Then an objection.) Just answer the question. Do you remember that? A. Read that again, please.

Q. "And you didn't know of any of their lands except what Mr. Barber or some member of the corporation indicated to you, did you? A. I knew of lots of lands, but I supposed—"

A. I don't understand that.

Q. "Q. Now, in connection with this book, what indicated to your mind that certain lands belonged to them, that is in this note-book of yours which you carried with you?" The question wasn't answered.

"Q. Now, in your conversation with Mr. Barber,

(Testimony of G. D. Hoseley.)

when he handed you this book, what did he say?

A. Well, I don't know really what he did say about it." Do you remember that?

A. I think I did.

Q. "Q. Just give as near as you can what he did say to you about this matter. A. Well, if I remember right, he said it was a plot book of the land.

Q. A plot book of their land? A. Yes, sir." Is that right? A. Yes, sir.

Q. "Q. Is that it? A. That is about the sum and substance of it, if I remember right. Q. (Referring to this book that we have been speaking of and during the time that you were employed by the Barber Lumber Company in Idaho.) During that period of time you used this memorandum-book or plat-book, did you, continuously? A. Yes, sir." Is that right? A. Yes, sir.

Q. Mr. Hoseley, do you remember, before the Borah trial and before the Grand Jury that indicted Mr. Borah and others, having a talk with the United States Attorney, and Mr. Garrett, and Mr. Wade, and a number of others?

A. I know they called me in there one night about half past nine, I guess it was; Mr. Garrett, and Mr. Wade, and Mr. Burch and Mr. Rush, they got me down there, but we didn't talk very long; it just seemed to break up in a kind of disorder, and when I looked around there wasn't anybody there, and I went away.

Q. Do you remember of any written statement being made at any time of conversations you had

(Testimony of G. D. Hoseley.)

with them, or the district attorney, or any of the officers of his office?

A. Before that time, if I remember right, there was some conversation in the special agent's office, but at that time there was a lot said, but I don't think there was anybody taking anything down.

Q. Do you remember at any time of any conversation you had with these gentlemen anything being taken down that you said, questions and answers?

A. I don't remember whether there was anything taken down; I don't think I was ever in there but once, Mr. Gordon, and whether anything was taken down or not, I don't remember. If I remember right, Mr. Ruick said to me afterwards—he wasn't there at the time—he said something that there was things taken down there, and when he come to talk to me about it again, I didn't remember the questions and didn't answer them, and I told him so, and he said, if I remember right, that he guessed there was some mistake, that the stenographer didn't get it as I told it.

Q. Do you remember whether, on one of those occasions, this question was asked you and this answer made by you: "Q. When you entered the employ of the Barber Lumber Company and started for Boise, what did you understand was the proposition that the Barber people had here? A. Why, I understood that Mr. Barber had five hundred million of timber here." Is that correct?

A. I don't remember about it at this time, but that is as I understood it.

(Testimony of G. D. Hoseley.)

Q. You understood that when you left Wisconsin?

A. When I left there, yes, to come here, but, as I said, I think he either told me or wrote me that that was what he had.

Q. I asked you now if you understood that before you left Wisconsin.

A. Well, I think I did, yes, before I come. You mean as a salaried man?

Q. Yes. A. Yes, I think so.

Q. And you called yourself a salaried man?

A. After the 21st day of September, 1903.

Q. And any conversation you had with Mr. Barber about that five hundred million feet was a conversation you had had with him just prior to leaving Wisconsin? A. Yes, I think so.

Q. Do you remember this question being asked you: "Q. State in what manner the holdings of the Barber Lumber Company were indicated on this book when it was handed to you? A. In red ink.

Q. Red check marks? A. Yes, sir, red check marks. Q. Were those check marks as here shown

you there when you got the book? A. The red check marks is just as they was when Mr. Barber handed it to me." Do you remember those questions and answers?

A. I think I stated that here to-day, that the check marks would be the same.

Mr. BUNDY.—The check marks or the V marks?

A. The V marks.

Q. "Q. From the time it was handed to you to

(Testimony of G. D. Hoseley.)

the present time there has never been a check mark put in there except those that were in there when you got the book? A. No, sir, if there ever was I never knew it. All the red marks was there when I got the book, just like they are there now. The black marks were put there after I got the book.” Do you remember that question and that answer being made?

A. Well, I referred to the red check marks.

Q. The expression is, all the red check marks.

A. Well, maybe I didn’t understand the question.

Q. The next question: “Q. Every red ink mark that appears on this was there when it was handed to you? A. Yes, sir.” Do you remember that?

Mr. BUNDY.—What does “this” refer to?

Mr. GORDON.—This book.

Mr. BUNDY.—It might or it might not.

Mr. GORDON.—Let him answer the question, please.

A. I can’t say to you, Mr. Gordon, about that; I don’t think that was clear. I think if you go on through this testimony you will find that this thing came up, the matter of them little red dots, and I drew that to these people’s attention when they turned this book back to me. Of course, it slipped my mind about my getting that claim up there, and my claim was marked the same as them others, and that claim wasn’t proved up on for a long time afterwards, and I think you will find from that evidence that I modified that evidence.

Q. I will ask you if you remember this question:

(Testimony of G. D. Hoseley.)

“Every red ink mark that appears on this was there when it was handed to you? A. Yes, sir.” Do you remember that that question was asked you and that answer made by you?

A. I don’t remember, Mr. Gordon, about that.

Q. “Q. And the book has never left your possession? A. Never; I always had it with me; I might have laid it down like that, or something of that kind, but I never let it leave my possession. That is all I had to go by, and I went up on Crooked river and come down the North Fork, and I think I took a skin in on to Grimes creek just a short time. That is all the land I looked over. That is where we was supposed to start lumbering operations, on Crooked river.” Do you remember that question?

A. I don’t recollect, but that is the facts of the case just the same.

Q. “Q. What was the purpose of that trip? A. Mr. Barber wanted me to put an estimate on the timber and see if the timber was going to hold up, and see about the facilities for logging and driving and the cost I thought would accumulate in making a run on the river.” Was that question asked you and that answer made by you?

A. I don’t understand that question.

Q. I will read it again: “What was the purpose of that trip? A. Mr. Barber wanted me to put an estimate on the timber, and see if the timber was going to hold up, and see about the facilities for logging and driving, and the cost I thought would accumulate in making a run on the river.”

(Testimony of G. D. Hoseley.)

A. There is a little something mixed about that. That was the facts of the case, as I testified here before, that I went up there to look at those things, but this accumulating and making a run on the river, that's out of line with anything I ever had before; it might be a bull that I made, but I wouldn't say that if I had my right senses, because that ain't in line.

Q. Do you remember this question being asked you: "Q. Can you recall the conversation that took place in your presence between Mr. Barber and Governor Steunenberg and yourself, what was said by anyone? A. No. Mr. Barber done the talking. He said that they had land here, and he says, 'There is a man here that knows something about the country, and I want you to go with him,' and he says to me, 'You see what you go to look at; you go and see it and don't take anybody's say so about anything.' " Is that right?

A. That's a fact, yes, sir.

Q. "Q. Who did he refer to? A. Mr. Downs, and Mr. Downs went with me and made the trip." Is that right?

A. Yes, sir, that was my first trip.

Q. "Q. Who was Mr. Downs representing? A. Nothing, only he was just going up with me. Q. Who paid him? A. That I don't know. Q. Who did you understand he was representing? A. He was just sent along as a fellow to show me the country." Is that right? A. Yes, sir.

Q. "Q. Who was it that told you, 'We have got a fellow here to go around with you?' A. Mr. Bar-

(Testimony of G. D. Hoseley.)

ber. They brought me and introduced me to him.”
Is that right?

A. You mean they brought Mr. Downs?

Q. Yes. A. Yes, sir.

Mr. BUNDY.—The question is now, as I understand it, whether you remember these questions being asked you and these answers given.

A. I don't remember that, no, but it is about on that line, probably, but it is nothing only—

Mr. GORDON.—I will ask you this: Who was it that told you “We have a fellow here to go around with you”?

A. Barber said he would get a man, or something to that effect.

Q. I asked you a few moments ago if you remembered the question and answer, and you said that you did, and the answer was this: “No. Mr. Barber done the talking. He said that they had land here, and he says, ‘There is a man here that knows something about the country, and I want you to go with him,’ and he says to me, ‘You see what you go to look at; you go and see it and don't take anybody's say so about anything.’” You said that was your answer, and then you said that this man was Mr. Downs.

A. Yes, that was the man that came, Mr. Downs.

Q. Then you were asked, who was it said we have got a fellow here to go around with you, and you said Mr. Barber. Is that right? A. Yes, sir.

Q. Now was the land that is indicated in that book the land that Mr. Barber had Mr. Downs take

(Testimony of G. D. Hoseley.)

you up and show you?

A. Some of it is, what we looked at; we didn't look at very much, we didn't have much time to look. I estimated a few pieces, a few 40's.

Q. Did you know what connection Governor Steunenberg had with the Barber Lumber Company?

A. No, sir.

Q. Did Mr. Chapman tell you to turn the numbers over to him?

A. In scrip I was to turn the numbers over to Mr. Steunenberg.

Q. As I understand, at that time you were employed by the Barber Lumber Company.

A. Yes, any time after the 21st of September.

Q. You made a timber and stone entry yourself, didn't you, Mr. Hoseley?

A. Yes, sir.

Q. That was in 6-8, was it?

A. 6-8.

Q. Do you remember when you filed?

A. It was, I think, on the 3d or 4th day of August, 1903.

Q. Who located you?

A. Patrick Downs.

Q. Did you pay Mr. Downs to locate you?

A. Yes, sir.

Q. How much did you pay him?

A. \$50.

Q. Did you pay him by check?

A. Yes, sir.

Q. Was it on a bank here?

A. No, sir, it was on the Nealsville Bank, Wisconsin.

Q. Did you sell that claim?

A. Yes, sir.

Q. Who did you sell it to?

(Testimony of G. D. Hoseley.)

A. The Barber Lumber Company.

Q. How much did you get for it?

A. \$3500.

Q. When did you sell it?

A. I think it was—

Q. I mean approximately.

A. Well, I was just thinking approximately. I was at Ashland about two years, and I sold it before I went, so it must have been sold in December, 1907.

Q. And did you locate when you were here on the first trip? A. Yes, sir.

Q. That was in August?

A. In August; well, I think in July was when we looked it over; I think it was in August.

Q. Then Mr. Downs located you?

A. The trip we came down.

Q. You got the best piece of timber up there, didn't you?

A. Well, it was a good fair piece, maybe not the best.

Q. And to whom did you sell that claim? You said you sold it to the Barber Lumber Company.

A. Yes.

Q. Who did you negotiate the sale with?

A. Mr. Chapman.

Q. Did you have any discussion with Mr. Chapman as to what he should pay for it?

A. Yes, we discussed the matter several times.

Q. And did he indicate to you that he thought that, under the circumstances under which you had located, that you ought to let the Barber Lumber

(Testimony of G. D. Hoseley.)

Company have it for the price it had been paying for the other timber claims? A. No, sir.

Q. Do you remember, in this conversation that you had in the special agent's office, that you spoke of, this question being asked you: "Didn't Mr. Chapman, when he was negotiating with you, claim that the Barber Lumber Company ought to have that claim? A. Yes, sir, and I told him I couldn't see how; I told him that I only got my expenses, and I told him I didn't see how they would have any claim on my claim, because I furnished my own money when I made final proof, and he said it all was leading up to that, and I said something bad, of course, and so he got mad and so did I, and I went out of the office." Do you remember that question being asked you and that answer being made by you?

A. No, I do not.

Q. As a matter of fact, did that take place between you and Mr. Chapman?

A. Well, I don't think that is the meaning. Of course, he wanted to buy the claim as cheap as he could, the same as I would, but not the way that states there. It goes on there that it was some premeditated business, and I don't think that was the meaning of it, I don't think that, Mr. Gordon; I know we dickered considerable about the claim.

Mr. GORDON.—We offer in evidence the book, marked "Northwestern Lumber Company, Eau Claire, Wisconsin," which has been identified by the witness.

(Book marked Plaintiff's Exhibit No. 141A.)

(Testimony of G. D. Hoseley.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Hoseley, your first trip that you made out here in July was rather with the view of looking over the country as a logging proposition, was it not?

A. Well, Mr. Barber wanted me to look it over as a logging proposition, as a contract proposition.

Q. You had been in the business, back in Wisconsin, of logging on contracts? A. Yes, sir.

Q. That is, you owned your own equipment and horses and outfit, and would take contracts at so much per thousand? A. Yes, sir.

Q. Now, as near as you can recollect it, you think it was sometime in August, after your return from the first trip here, that Mr. Barber asked you to come up to Eau Claire and talk it over?

A. I think it must have been August, the first trip.

Q. Then this proposition to come out here on a salary was submitted to you, and you went home to consider it? A. Yes, sir.

Q. About what time did you get back to Eau Claire, the second trip?

A. Well, I can't say, but I must have left there about the 17th, the 16th or 17th, because I got here the 21st, and I don't think I was over four days on the road.

Q. That is, left Nealsville?

A. Yes, and I went up to Eau Claire, and came right back and packed, and I packed awful quick, I know that.

Q. What is your best judgment about what day it

(Testimony of G. D. Hoseley.)

was that you was at Eau Claire?

A. Well, I don't think it would be more than the 10th or 12th.

Q. Was that the trip to Eau Claire that Mr. Barber gave you the book? A. Yes, sir.

Q. Do you recall that at that time that book had been prepared with the intention of sending it out here by mail, do you recall any talk between Mr. Barber and Mr. Moon with reference to sending out a book?

A. That draws something to my attention, that the first time I was there they said they would fix up a book, that's a fact, some of it, and the second time it seems to me when we first talked about it, that they didn't have time to get it out, and would send it out to Steunenberg, if I remember the thing right, but they did get it out, did have the time, and got it out before I left.

Q. At the time that they gave you this book, Mr. Hoseley, it was a brand new book, was it not?

A. Yes, a brand new book.

Q. And none of these writings on the fly-page in lead pencil were there? A. No.

Q. And none of the lead pencil marks or black marks or blue marks were on the different pages, or yellow marks, on the different pages that have been shown you, were they?

A. I don't think they were.

Q. And none of these figures? A. No.

Q. And your best recollection is that at the time the book was handed to you it was a clean, new book,

(Testimony of G. D. Hoseley.)

containing the names of the township and range at the head, and containing the V marks or check marks that you have testified about?

A. I think it was the check marks.

Q. Was there any other marks in the book other than the index, the township and range, and the check marks? A. Not that I know of.

Q. Your best recollection would be that there would not be?

A. I don't think there were.

Q. You wouldn't attempt to identify all the marks on those different pages, to tell who made them? A. No, I would not.

Q. This book, Mr. Chapman had access to it, of course?

A. When things came up I suppose probably I might hand it to him, when I came down off my trips, and, of course, that was my record, and I could remember things from that book.

Q. And Mr. Cobb also had access to it?

A. Mr. Cobb was in the office there, and might have had access to it.

Q. Calling your attention to 6-4, on page seven of this book, there seems to be a blue line drawn around 2, 3, 11, 14, and other sections and parts of sections. Was that in there when Mr. Barber gave it to you? A. I don't believe it was.

Q. And in sections 15, 22, 21, 20, and some other sections, there are red straight marks, look like a one, spoken of here as a dot; they weren't in there at that time, were they? A. I don't think so.

(Testimony of G. D. Hoseley.)

Q. Were there any marks at all in 6-4 at the time he gave you the book, except the numbers at the top, "6-4"?

A. That's all; I don't think there was anything in the book to indicate that. Of course, the yellow mark there, I don't know what that means.

Q. There is none on 6-4 I believe.

A. No, none on 6-4, but some on 5-4; I think that must have been unsurveyed.

Q. You didn't make those? A. No, sir.

Q. There are a great many kinds of marks.

A. The V's I am satisfied was in there when I got the book.

Q. And you are satisfied that nothing else was in there except this.

A. I don't think there was, because in my own claim, it gives me to show that they was not in.

Q. Now, when you first came out here you learned did you not, Mr. Hoseley, that the Barber Lumber Company were attempting to negotiate for the purchase of a lot of State lands in 6-4?

A. Yes, sir.

Q. And that would account for its being in the index here?

A. Well, Mr. Chapman always told me any time I went near the State lands to look at it as I went by, or go through it, to get a kind of an idea of it.

Q. I notice that this book seems to have been made up according to ranges; the first is 5-4, 6-4, and 7-4, and 6-5, 7-5, and 8-5, and then jumps on over to range 6 and range 7, so it seems to have been made

(Testimony of G. D. Hoseley.)

in the order of the ranges. Now, during the time you were employed by the company here your business was that of superintending the logging and driving? A. Yes, sir.

Q. What cruising you did was sort of incidental to your main work? A. Yes, sir.

Q. You were not hired to come out here as a cruiser? A. No, sir.

Q. You had exclusive charge of the logging and driving; I think you had no one over you in that respect; the understanding was that you was to have charge of that branch of the business?

A. Yes, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Hoseley, you came here, as I understand, the 21st of September? A. Yes, sir.

Q. And how long after that was it that you went into the woods?

A. Well, it was very shortly that I went up there and put out a lot of unsurveyed scrip.

Q. How do you mean by "shortly?"

A. Just as quick as I got a house and moved into it; it couldn't have been to exceed seven days, I think.

Q. During that time did you take your book and show it to Mr. Chapman?

A. I don't know as I showed it to him; I don't know as I did, but I might have.

Q. You didn't give it to him to keep during that time, did you? A. No.

(Testimony of G. D. Hoseley.)

Q. Then you went up into the woods about the 1st of October?

A. Well, I think it was the last days of September or the first of October.

Q. Then where did you go?

A. Went into 7-9.

Q. Well, I mean is that up by Mose Kempner's ranch?

A. Yes, further east.

Q. Did you have a camp up there?

A. Yes.

Q. How far is that from here?

A. About sixty-five miles.

Q. Who went with you?

A. Mr. Chapman, Mr. Stevens, several axmen and woodsmen.

Q. Who is Mr. Chapman?

A. L. G. Chapman, the manager.

Q. The manager of the Barber Lumber Company?

A. Yes, sir.

Q. And how long did Mr. Chapman stay up there with you?

A. I think probably five or six days.

Q. Then when did he return to Boise, after that five or six days?

A. Yes, we came down; I thought we wasn't getting along fast enough for the expense we was going to, and I said, "I can do that myself for one-tenth part that it is costing me," and he said, "We will go back to Boise and you can fix up another outfit," and that's the way we did it.

Q. How long did you stay here on that occasion?

(Testimony of G. D. Hoseley.)

A. If I remember, we was here three or four days.

Q. Did you keep this book in your possession?

A. Yes, off and on in my possession all the time.

Q. You hadn't any occasion, if you had it in your pocket, to take it out and put it down there during these three or four days?

A. No, I don't think so.

Q. Then you started off, after being here three or four days, and went back to the woods?

A. Yes; I think I was gone three or four days, till I got what I wanted done, and maybe five days.

Q. Do you mean you were here three days, and then went away four or five days?

A. Possibly four or five days, and came back again.

Q. And you had nothing in this book to report to Mr. Chapman, did you?

A. Yes, I was using that book to locate the unsurveyed scrip with, that is, I was keeping track of it in the book.

Q. Did you take the book and read it to Mr. Chapman, or did you hand it to him to read himself?

A. I probably handed it to him to read himself.

Q. And he understood all that was in it?

A. I believe that he would.

Q. During those days, what scrip did you put in here?

A. We was handling the Northern Pacific unsurveyed.

Q. What scrip did you locate on that trip?

(Testimony of G. D. Hoseley.)

A. Unsurveyed Northern Pacific.

Q. Did you locate it on any of these plats here, did you indicate it on the plats?

A. If you will let me see the book I will tell you whether I did or not. (Witness takes book.) It seems to be hard to tell; there is the unsurveyed scrip, and it is marked with a check too, and I know nobody knew anything about that; I am satisfied they didn't, because I selected it myself.

Q. What do you mean by "selected it yourself"?

A. I picked it from the unsurveyed sections.

Q. That is in 7-9?

A. It is in 7-9, and it is marked with red ink and with a V; I can't help it, because I selected that scrip.

Q. Did you put those V's in there?

A. No, I did not; that's a fact, Mr. Gordon. Of course that wasn't brought to my attention before. That's a fact, Mr. Gordon, because I selected that scrip myself in 7-9, and done all the selecting, and in 8-9, and that marked V's there in that book, and my attention was never called to it before.

Q. Did you select that scrip in 1903?

A. 1903, Northern Pacific scrip, I picked out a good many hundred acres—no, surveyed scrip; at that time it was unsurveyed scrip; I surveyed a lot of it myself.

Q. You can survey sufficiently to do that?

A. Yes, I ought to; I have been years enough at it to do that.

Q. When did you go up in the woods again?

(Testimony of G. D. Hoseley.)

A. Then we started a ranch, started to clear up a ranch this side of Kempner's, and I took, oh, I guess, four men there and a cook, and grubbed out, I think, about some fifteen acres there at that time.

Q. How long did you remain there?

A. Then I was back and forward all the time; I didn't stay there with the crew then; I had a foreman; we was going to start a hay ranch there.

Q. Do you remember how long you were up there grubbing?

A. I can't tell; I was back and forward, chasing all the time; I was up there and down here.

Recross-examination.

(By Mr. BUNDY.)

Q. On pages 46 and 47 of the book, there are some red check marks indicating unsurveyed sections which were located by scrip. Do you personally know that those were located after you came from Eau Claire?

A. I personally know that I selected that land myself.

Q. In view of that, and calling your attention to that, what do you say now as to whether all the check marks were made at Eau Claire?

A. By gracious, I can't say, because I know I selected that land myself.

Q. The red check marks on those two pages, 46 and 47, must have been made then after you came here?

A. That must be the fact, because if he hadn't called my attention I wouldn't have thought about

(Testimony of G. D. Hoseley.)

it, because I know I selected the land, and nobody else knew anything about it.

Here an adjournment was taken until ten o'clock, A. M., Wednesday, March 3, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. G. D. Hoseley resuming the stand.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Hoseley, I understood you to say yesterday, that when you started in the employ of the Barber Lumber Company and started from Eau Claire, for Boise, that you understood that the Barber people had about five hundred million acres of timber land in Idaho.

A. Five hundred million acres or five hundred million feet?

Q. Five hundred million feet of timber.

A. Yes, sir.

Q. I understood you to say later that you cruised that and reported that they had about five hundred and fifty million feet of timber, according to your estimation. A. Yes.

Q. Now this five hundred and fifty million that you reported, did you find that on the same area that the five hundred million was estimated on, or was there additional lands that you made your estimation from?

A. Well, I think it was on the land that I figured they owned at the time I came here.

(Testimony of G. D. Hoseley.)

Q. In other words, you had raised the estimation, or the estimate, that had been made upon which the five hundred million was based.

A. Well, I based it on the lands that I had looked over, and I raised the estimate, so that is the way I estimated, on the gross, yes.

Q. In other words, your estimate was made on the same land and timber that the five hundred million estimate was made on? A. Yes.

Mr. KEIGWIN.—Q. And not by adding to the area that had been originally given to you?

A. No.

Mr. GORDON.—Q. Did you make any notes of your estimate or cruise?

A. No, only as a percentage.

Q. State how you did that, please.

A. Well, I figured that the estimates on the whole was ten percent low.

Q. When you left Eau Claire in the early part of September, 1903, or your home, which is near Eau Claire, the only data that you had as to the holdings of the Barber Lumber Company people in Idaho was contained in the book which you identified here yesterday, was it not? A. As I supposed.

Q. That was all the information you had?

A. Yes.

Q. Now do you remember whether or not your employment to come to Idaho by Mr. Barber was about the 1st of September, 1903?

A. I think probably about the first talk we had, but not anything—I don't think it was definite at

(Testimony of G. D. Hoseley.)

that time, but the first talk we had was the last of August or the first of September, something about that.

Q. See if these questions and answers which I shall read to you, which purport to be a stenographic report of your statement, made on the occasion that we referred to yesterday, March 23, 1907, will refresh your recollection: "Q. You were supplied with data of the company's holdings at that time? A. I were, yes, sir, when I left to go home and start to move, that must have been some time about the first of September. Q. Of 1903? A. Yes, sir. Q. Can you fix that date definitely? A. I couldn't, well, I couldn't really, you know, because I couldn't tell exactly the days that it took me to pack, but I went home and probably I was a week packing and getting a car and things of that kind, and I was four days on the road, so it was probably about ten days before the 21st day of September that I landed here." Do you remember those questions and answers, as well as you can remember?

A. If I remember right, I was there twice at Eau Claire.

Q. But this was with relation to your last visit to Eau Claire, before you started for Boise.

A. That would make it the 10th or 11th, I would think.

Q. I don't remember exactly what you said, that was all.

A. I think—of course I can't remember exactly—but I think probably it was the 10th or 11th the

(Testimony of G. D. Hoseley)

last time I was in Eau Claire, and it might have been the 12th, and it might not have been more than the 9th; I couldn't say for sure, because I have no record of anything like that.

Q. Mr. Hoseley, how long after you arrived at Boise, in September, 1903, did you make that estimate and report to Mr. Barber? Was it a written report or a verbal report that you made to him in September, 1903?

A. Oh, I didn't make no written report nor verbal report in September, 1903, because I didn't have nothing looked over at that time.

Q. Well, I didn't want to make you say that it was in September, 1903, but I was fixing the time that Mr. Barber came here in September, 1903, and what I wanted to know was whether you told him that on the occasion of his being here in September, 1903.

A. Well, but Mr. Barber wasn't here in September, after I came here as a salaried man.

Q. Well, to whom did you make that report?

A. Well, it was the next time that I saw Mr. Barber that he came here.

Q. When was that?

A. By gracious, I can't tell you; I think it was the next year, in June, that I was asked at a meeting.

Q. Just approximately.

A. I don't remember when he came, but it was whenever he came.

Q. Mr. Hoseley, referring to the plat in this book that we discussed here yesterday, 6-4, what is your

(Testimony of G. D. Hoseley.)

best recollection now as to what was on that page when it was given to you, other than the title "6-4" at the top of the page?

A. That I can't say, Mr. Gordon.

Q. Mr. Hoseley, this book that you identified yesterday, marked Plaintiff's Exhibit No. 141A, that is the same book that you identified at the Borah trial, is it? A. That's the same book.

Q. Now, Mr. Hoseley, did I understand you to say that any person in the office of the Barber Lumber Company at Boise had access to that book?

A. Why, I said that they might have took that book lots of times; there was my references in that book when I brought it into the office, whenever I took up anything with Mr. Chapman, and, of course, I suppose he had that book; his testimony would be better than mine on that.

Q. You don't ever remember of taking that book to him and handing it to him and leaving it with him, do you?

A. I don't remember it, but still I would hate to say that I didn't.

Q. I don't want you to say anything you don't remember, Mr. Hoseley. You don't ever remember seeing Mr. Chapman write anything in that book, do you? A. I can't say as I do.

Q. Who else was in the office of the Barber Lumber Company at that time?

A. Mr. Cobb's son.

Q. What Mr. Cobb's son?

A. Calvin Cobb, of the "Statesman."

(Testimony of G. D. Hoseley.)

Q. You mean the son of Mr. Calvin Cobb, of the "Statesman"?

A. Yes, young Mr. Cobb, Lyon Cobb.

Q. You don't know that he had access to that book, do you?

A. I don't know that he didn't, either.

Q. You mean the access he had that if you carried it into there and put it on the desk, you wouldn't have considered it an affront for anybody to have picked it up and looked at it?

A. No, because anybody that was in the office would have a right to pick it up and look at it that was salaried.

Q. But nobody in the office had any business putting anything in that book except for your information, did they?

A. Well, no, I wouldn't think they had; it would be something for me to look at, or something to that effect.

Q. And you don't remember of anybody putting anything in that book and telling you, or any marks in that book, and telling you what they put them in there for, do you? A. No, I do not.

Q. Now, do you remember Mr. Barber telling you about some scrip that he had that he wished you to locate?

A. I don't think Mr. Barber ever said anything to me about—oh, on unsurveyed? Yes, he spoke to me about unsurveyed scrip when he was here—no, not when he was here—it must have been when I was at Eau Claire, because I don't think he talked about

(Testimony of G. D. Hoseley.)

unsurveyed scrip when he was here; I didn't understand anything about the scrip at that time.

Q. When you were at Eau Claire in 1903 do you remember whether or not Mr. Barber told you that he was going to send a lot of unsurveyed scrip to Boise for you to place, and that the scrip is located in 7-9 and 8-8, and some of it in 8-7?

A. No, I don't remember the towns; I remember him speaking about unsurveyed Northern Pacific scrip, but I don't know that he said anything about what towns it was.

Q. Did you place any unsurveyed scrip in 7-9, 8-8, and 8-7?

A. Yes, in the three towns.

Q. Now this unsurveyed scrip, will you explain to me what that is?

A. It's lien scrip of the Northern Pacific that was issued to the Northern Pacific for the Mt. Rainier.

Q. Now, you mean that there was certain land that the Northern Pacific had turned back to the Government, and for each acre or quarter section or something of that kind, they gave them that many acres somewhere else that was to be located when they got ready to locate it. Is that it?

A. That is as I understand it.

Q. They could locate it on lands that were at that time unsurveyed?

A. I understand that the same amount of acres that was in the Mt. Rainier forest reserve that was unsurveyed at that time, they could take the same amount of acres any place in the three states.

(Testimony of G. D. Hoseley.)

Q. Could they locate that on land that had been surveyed, or did they have to locate it on unsurveyed land?

A. It was unsurveyed scrip, and they had to locate it on unsurveyed lands.

Q. And there was some items in this book yesterday on pages 46 and 47, that I understood you to point out some sections there on which you had located some unsurveyed scrip.

A. Yes, sir.

Q. Now, what sections on page 46, indicated as township 6 north of range 9 east, did you locate any unsurveyed scrip on?

A. On section 4.

Q. And will you describe what parts of section 4 you located that scrip on?

A. The northwest of the northeast, northeast of the northwest, and the northwest of the northwest, section 4, township 6 north, range 9 east.

Q. Now, on the next page of that book, page 47, township 7 north of range 9 east, what scrip did you locate there?

A. Southwest of the southwest of section 18, 7 north of range 9 east.

Q. That is just a forty?

A. Just a forty.

Q. That is all you located there?

A. In that section, but I located all the balance of this. Do you want the balance of it?

Q. Yes.

A. The northeast of the northwest, the northwest of the northwest, the southeast of the northwest, the southwest of the northwest, the northwest of the

(Testimony of G. D. Hoseley.)

southeast, the southwest of the southeast, the northeast of the southwest, the northwest of the southwest the southeast of the southwest, the southwest of the southwest, section 19, 7 north, 9 east; and the southwest of the southwest of section 21, 7 north, 9 east; the southwest of the northwest, section 28, 7 north, 9 east; the northwest of the northwest, the southwest of the northwest, the northwest of the southwest, section 29, 7 north, 9 east; the northeast of the southeast, section 32, 7 north, 9 east; the southeast of the northwest, the southwest of the northwest, the northeast of the southwest, the southeast of the southwest, the southwest of the southwest, the northwest of the southeast, the southwest of the southeast, section 33, 7 north, 9 east. Is there anything more, Mr. Gordon, that you want?

Q. That's all. Now, Mr. Hoseley, do you remember when you located that scrip?

A. It was in October, but the days I can't remember.

Q. In October, 1903? A. Yes, sir.

Q. And do you know whether that scrip has ever been approved or not? A. I do not.

Q. Now, what do you mean by saying that you located it? Do you mean that you posted the notices?

A. Well, I selected it with an engineer.

Q. Who was the engineer?

A. Mr. Stevenson.

Q. Did Mr. Dennis Thornton go over any of this with you? A. No, sir.

(Testimony of G. D. Hoseley.)

Q. Did Mr. Connors? A. No, sir.

Q. Did you know Mr. Connors?

A. There is several Connorses; I don't know which Connors you refer to.

Q. Mr. C. B. Connors.

A. I didn't know him here, but I knew him well in Wisconsin.

Q. Was he out here cruising when you was here?

A. No, sir.

Q. Mr. Hoseley, when you came here you understood that you were to look over everything or all the property that was indicated in this book by a red mark, did you not?

A. No, I don't know as I was to look over everything that was indicated by a red mark; I don't remember as to that.

Q. Did you go over all of the land that was indicated in this book by a red mark?

A. No, sir.

Q. Well, you did go over all the property that was indicated in that book with a red mark, and a great deal more too, didn't you?

A. No, I think probably there is a great many things in that book that I have never seen, but I have seen a great deal.

Q. See if this will refresh your recollection, Mr. Hoseley. I am reading from that same statement that I referred to before: "Q. You understood that you were to look over everything that had a red mark? A. As I remember, everything that had a red mark they owned. Q. But you did look it all

(Testimony of G. D. Hoseley.)

over? A. Oh, yes, I cruised the whole country, and more too."

A. Well, but still—I cruised the whole country, but then to go onto every subdivision, I didn't understand it that way.

Q. Well, I just wanted to see if I could refresh your memory. I show you page 41 of this book, and note that there are a number of lead pencil marks there, the letter D. Can you tell me what those D's mean, what they were put there for?

A. I think it was for doubtful scrip, if I remember right; now I can't say, but I think it was; I was looking for scrip when I was there, looking for a place to locate some scrip, and I think I put that D on there for doubtful, not being good enough, but I don't remember; it might have been for something else, maybe somebody owned it for all I know whose name was D; I can't say as to that.

Q. Do you see section 5 on that page?

A. I do.

Q. Do you remember whether or not that is a placer mine?

A. I do; I knew they claimed it was a placer mine.

Q. And on section 6 you put some scrip?

A. Yes.

Q. Now did Mr. Barber tell you before you left Eau Claire that if you got into any difficulties here that you should go to see his lawyer here?

A. No, he didn't tell me if I got into any difficulties.

(Testimony of G. D. Hoseley.)

Q. Well, express it your way.

A. He said if there was any legal advise I wanted why to go.

Q. Who did he tell you to go to?

A. Mr. Borah.

Q. What Borah is that? A. W. E. Borah.

Q. Did he tell you that he was the attorney for the company at that time?

A. I don't remember whether he said he was the attorney or not, but that's what he told me.

Q. And do you remember about buying the Costin ranch?

A. It was bought before I came here.

Q. And did they have any difficulties over that ranch?

A. Well, they didn't over the purchase, but they had some little *fugalty* about getting possession.

Q. And who did you consult about getting possession? A. Mr. Borah.

Q. And did Mr. Borah then purchase it for the company?

A. No, the ranch was purchased, but it was the time of getting possession that we was having some trouble about.

Q. Do you remember whether or not Mr. Borah bought some timber claims for the company on your representation? A. I do.

Q. And do you know who paid for those claims?

A. I do not.

Q. What do you mean by Mr. Borah buying them then?

(Testimony of G. D. Hoseley.)

A. Well, there wasn't anybody here at that time, and I said to him, "There's some timber claims up in the country on Grimes Creek that a man would like to sell, he says he needs the money very bad," and he said, "Don't come to me with no timber claims; I don't want you to talk timber claims to me." And he said, "You go up to the land office and see if there is anything against it or not." And I asked Mr. Garrett if there was anything against those claims, and he said no, the man had his own money and had made final proof, and had patent, so I went back to Mr. Borah and told him.

Q. Then did he call up the bank while you were there and ask if there was any money there?

A. I believe he did.

Q. And the claims were purchased that day?

A. I don't know.

Q. Whose claims were they?

A. Gardner's.

Q. What Gardner?

A. I think it was C. H. Gardner, I don't remember, and his wife and their son, I believe.

Q. Now, Mr. Hoseley, we spoke about the claim that you took up, yesterday, and afterwards sold to the Barber Lumber Company. You were negotiating with them for a long time before you sold it, weren't you? A. Quite a while.

Q. Do you remember the first offer they made you for that claim? A. About—it was \$2,000.

Q. And you wanted \$2500 at that time? Is that right?

(Testimony of G. D. Hoseley.)

A. I think so; I know there was \$500 difference.

Q. And then when they offered you \$2500 you wanted \$3,000?

A. I know there was a difference, yes, something to that effect.

Q. Now do you remember who prepared your filing papers? A. Yes, sir.

Q. Who? A. John Kinkaid.

Q. And do you remember who prepared the deed for you to the Barber Lumber Company? Did Mr. Kinkaid prepare that? A. No, sir.

Q. Who did?

A. Mr. Kinkaid wasn't here, I don't think; I think it was B. F. Neal.

Q. Who is he? A. An attorney.

Q. Did you pay him for drawing your deed?

A. Yes, sir.

Q. How much did you pay him?

A. I believe \$1.50.

Q. Do you remember, in your testimony in the Borah trial, referring to that book which you hold, and which is in evidence, these questions being asked and the answers which I shall read being given by you: "Q. Now, the townships and ranges at the headings of these pages, 5-4's and 6-4's, they were indicated to you or filled out when it was handed to you? A. Well, there was some marks in it, but I didn't know just what it was because I didn't know anything about it at that time." Do you remember that question being asked you and that answer being made? A. I do not.

(Testimony of G. D. Hoseley.)

Q. "Q. You didn't put any red marks here?

A. No." Do you remember that question and answer? A. I believe I do, Mr. Gordon.

Q. And that is correct, is it, that you didn't?

A. Yes, sir.

Q. Do you remember this question which I shall read you, being asked and the answer given: "Q. Were there not some red marks there? A. Oh, yes, but there was two kinds of red marks here, and I don't know whether they were all here or not." Do you remember that question and answer?

A. Yes, but I don't understand it as it is on them two pages; I understand the book as a whole.

Q. Is that the way you understood it then?

A. Yes, I didn't understand that it meant on just them pages, but I had forgot all about the red marks until the book was handed to me; I never noticed, never thought about it.

Q. I shall ask you if you remember these questions being asked you and the answers which I shall proceed to read being given by you at the Borah trial: "Q. Now can you turn to the plat here in this book referring to the Crooked River section? A. Yes, sir. Q. 7-8 is what you call the Crooked River? A. Yes, sir; of course there was more townships than that in the Crooked River country.

Q. Were there any marks that you made on there?

A. Yes, I should say I made them. Q. That is, the lead pencil mark? A. Yes, the dull lead pencil.

Q. You didn't make any of the red marks in that book in the Crooked River section? A. No, sir."

(Testimony of G. D. Hoseley.)

Do you remember those questions and answers?

A. No, I don't.

Q. Well, are those answers correct now?

A. Yes, sir.

Q. You knew a Mr. Blake, did you?

A. John J. Blake?

Q. Yes. A. Yes, sir.

Q. Did you ever have any business with him?

A. Yes, sir.

Q. Was he Senator William E. Borah's law partner?

A. I never understood that he was a partner; I understood that he was there and had an office or desk there, but I always understood he wasn't a partner.

Q. Now, to refresh your recollection, or to see if I can refresh your recollection, as to when you told Mr. Barber about there being five hundred and fifty million feet of timber here, I shall read the following question and answer from what purports to be a statement having been made by you to which I have referred.

Mr. BUNDY.—Is this the Ruick statement?

Mr. GORDON.—Yes, I will say that it isn't to impeach him. It is just to see if I can refresh his recollection as to time. "Q. You figured not by acreage but by quantity of timber? A. I figured after I come here, I think the time Mr. Barber was here in July, after I come in September, and he called a meeting of Mr. Carson and Mr. Chapman and Mr. Lockwood and this General Mullen, but Mr.

(Testimony of G. D. Hoseley.)

Mullen didn't come into the meeting; he asked me how much timber they had and said, "You know about what our holdings are and you know about how much timber we have got," and I says, "I do to an extent know about how much timber you own to-day," and he asked me what there was, and I told him. "Q. How much? A. About five hundred and fifty million that he had and a chance to cut six, but I would call it five hundred and fifty easy." Does that refresh your recollection as to when that conversation or report was made?

A. Well, I said, didn't I, that it must have been in June, or some time along there, the following year. It surely was the following year that Mr. Barber was here.

Q. From reading that I understood that it was the September of the same year.

A. No, this is July. It must have been June or July; I don't remember, I can't remember the date.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Hoseley, I think we had better get this cruising business straightened out for the benefit of Mr. Gordon and Mr. Keigwin, who are not from a lumber country. A cruiser, a man who goes to cruise or estimate land, goes on a forty, and the usual practice of making a close estimate is to select an average acre, count the trees, determine the number of logs to the tree, and in that way the number of feet to the acre, multiply that by forty, and get an approximate estimate of the number of feet on the forty, when it

(Testimony of G. D. Hoseley.)

is being done closely.

A. Well, when you are getting it closely you want to count each tree.

Q. That is what is termed estimating?

A. Yes.

Q. When you came out here, were you employed as an estimator and cruiser or as superintendent of the logging and driving?

A. Superintendent of the logging and driving.

Q. As such superintendent were you called upon to estimate or cruise timber other than such as was necessary in determining logging chances and to such an extent as you made selections for scrip?

A. Why, no.

Q. What I am trying to get at is, was this five hundred and fifty million feet which you told Mr. Barber based upon any attempt upon your part to estimate the lands they owned, by subdivisions, or was it based upon your opinion of the extent to which former estimates were low?

A. Yes, that was it; the former estimates I thought were low.

Q. You never attempted to go over all the land of the Barber Lumber Company for the purpose of estimating it?

A. No.

Q. And your knowledge was such as a practical woodsman would get in going through a country?

A. Yes.

Q. A man as experienced as you are can go through a country and give an approximate estimate of what timber is on a forty?

(Testimony of G. D. Hoseley.)

A. I always have.

Q. And did you ever make, or attempt to make, any estimate other than based upon your ability to judge in going through the country? A. No.

Q. Now with reference to this book again, I call your attention to page 47, which contains a plat of township 7, 9 east, and upon which plat there are a number of red ink check marks. That land was procured or located by the Barber Lumber Company in what manner? A. By scrip.

Q. That is the N. P. unsurveyed scrip you have spoken of? A. Yes, sir.

Q. Were those selections indicated by the check marks on the plat made by you? A. They were.

Q. Were they made before or after you came to Boise in September, 1903? A. After.

Q. At the time you arrived in Boise, and at the time you left Eau Claire, on your trip here in September, 1903, did anybody know what lands in that township, if any, would be selected for scrip purposes? A. No, sir.

Q. Did the Barber Lumber Company, or any officer or agent of the Barber Company, know what subdivisions they were to select in that township until you informed them? A. No, sir.

Q. With that fact in view, state as to whether or not those check marks on this page 47 were in the book at the time it was delivered to you at Eau Claire by Mr. Barber. A. They couldn't have been.

Q. Is your evidence on that subject the same with reference to township 6, 9 east, on page 46?

(Testimony of G. D. Hoseley.)

A. Yes, sir.

Q. Now, this book, Mr. Hoseley, was intended by the company and by you to be a record of the lands owned by the company as they acquired them?

A. Yes, sir.

Q. And during the time you were here, from September, 1903, and during the course of your employment by the company, the company was continually buying and acquiring lands, was it not?

A. They were.

Q. And as they acquired those lands, they would be, from time to time, inserted in this book?

A. It seems that they would; that would be the supposition.

Q. Wasn't that a fact, that you kept the book up to date?

A. I suppose it was kept up to date.

Q. And when Mr. Chapman, or anyone else, was advised of any new lands being acquired, the new lands were indicated in this book?

A. I believe they were.

Q. I now call your attention to page 42 of the book, containing a plat of township 8, the lands indicated by the red check marks on that plat were also located and selected by N. P. unsurveyed scrip, were they not?

A. Yes, sir.

Q. And the selections were made by you?

A. Yes, sir.

Q. After you had left Eau Claire in September, 1903?

A. Yes, sir; the survey was made by me too.

(Testimony of G. D. Hoseley.)

Q. At the time you left Eau Claire, did anyone know, or could they have known, what lands the Barber Lumber Company were to acquire in that township by scrip? A. No, sir.

Q. And from that fact, state whether or not those red check marks were in there when the book was handed to you.

A. They couldn't have been; I don't see how they could have been.

Q. I now show you township 8, range 7, on page 31 of the book, on which there are a number of red ink check marks, indicating lands of the Barber Lumber Company. A. Yes.

Q. How were those lands selected?

A. By scrip.

Q. Who selected them?

A. I located, selected and surveyed them.

Q. When did you do that?

A. In October, 1903.

Q. Prior to that time did any officer or agent of the Barber Lumber Company know, or have any means of knowing, as to what lands in that township they would acquire? A. No, sir.

Q. Based upon that fact, state whether or not those red check marks were in that book at the time it was given to you in Eau Claire.

A. They couldn't have been.

Q. Now when you first came to Boise, in September, 1903, shortly after that you made these locations of scrip. How long after that was it that you first had occasion, as superintendent or otherwise of the

(Testimony of G. D. Hoseley.)

Barber Lumber Company, of going up into 6-4?

A. Well, it was the next year that I went up there to look at the chances of logging.

Q. Some time after the spring of 1903?

A. After the spring of 1904.

Q. Up to that time had you any occasion to go through 6-4, or estimate it, or cruise it?

A. I believe that I picked some scrip on the west side of 6-4 that winter in February; I can't remember—let me see the book, Mr. Bundy (witness takes book); I think that I went in there and looked at some scrip in February, 1904.

Q. Did you ever have occasion during that year, or until the summer of 1904, to go over the lands indicated on the plat on page 7, which are marked with the red ink dots? A. I don't think I did.

Q. Now, Mr. Hoseley, Mr. Gordon asked you a question, he asked you what marks were on this plat on page 7, being a plat of township 6, range 4, other than the number of the township and the number of the range, at the time the book was delivered to you. I think your answer was that you didn't remember. Now will you kindly look at the book and state as to whether or not, at the time that book was handed to you, there was a single mark that you now recognize upon that plat at the time it was first given to you, other than the number of the town, and the number of the range, at the head.

A. I don't remember; I have no way of remembering.

Q. Well, were those red ink marks on there when

(Testimony of G. D. Hoseley.)

it was given to you?

A. I don't remember whether they was or wasn't.

Q. What is your best belief on the subject?

A. Well, that I can't say.

Q. Well, Mr. Hoseley, what did Mr. Barber tell you this book was, when he gave it to you?

A. Why, he told me it was the holdings of the Barber Company.

Q. That they owned? A. Yes.

Q. Did they own these lands in 6-4 at that time?

A. I am satisfied they didn't.

Q. Did he tell you that this book contained the check or marks of any lands they didn't own?

A. No.

Q. Did he tell you in that conversation that it contained any markings or checkings of any lands that they hoped to acquire, or anything except lands that they actually owned? A. No, sir.

Q. Now, as a matter of fact, as you have testified, they didn't own a single acre of the lands marked with red ink in this 6-4 plat?

A. I don't believe they did.

Q. From that fact, what is your belief as to whether or not he handed you a book marked with red ink on lands they didn't own?

A. My belief would be that them marks wasn't there, but to say absolute, I can't say, but I don't believe they was there.

Q. Your best recollection and opinion at the present time then would be that they were not there?

A. Yes, because it shows lands that they didn't own.

(Testimony of G. D. Hoseley.)

Q. And at the time Mr. Barber gave you this book he stated to you, in effect, that it contained lists or checkings of lands that they did own?

A. Yes, sir.

Q. Didn't pretend that it contained checkings of other lands?

A. No, sir.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Hoseley, I think I asked you yesterday about a conversation you had with Mr. Garrett, Judge Burch, Mr. Wade, and assistant district attorney, Mr. Johnson. You remember that conversation that you had with those gentlemen, do you, in Mr. Wade's office?

A. Well, no, I don't know as I remember it.

Q. I mean, do you remember of having a conversation with them in that office?

A. I don't know whether all them gentlemen was there; I remember that Mr. Garrett was there.

Q. Wasn't Judge Burch there?

A. I don't hardly believe he was in there at that time.

Q. Was Mr. Rush there?

A. I don't think at that time; no, I don't believe he was; he might have been; I can't say.

Q. Well, all or some of those people were together on some occasion during the Grand Jury proceedings at which Senator Borah and others were indicted, and had a conversation with you, didn't they?

A. Yes, I was in the special agent's room there a few minutes one day, very few, but I think I went

(Testimony of G. D. Hoseley.)

in with Mr. Garrett.

Q. Now, I shall ask you if, on any one of those talks you had at that time, you stated to either one of them, or all of them, that the red marks indicated by a dot or a dash, on page 7 of this book, in township 6, range 4, you said that those marks were in that book when it was given to you by Mr. Barber in Eau Claire.

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial, as an attempt to impeach their own witness, not calling his attention to time or place, or the person to whom such statements are alleged to have been made.

A. Well, I hardly know how to answer you, Mr. Gordon, but them things came up, and it had all slipped from my mind, as I said to them on that occasion, and, of course I can't remember four or five years; now, that is the facts of the case. So we talked about it in a free kind of a way, and the best of my mind was that the red marks was in that book at that time, but three or four days after, when I was called down in the evening in the land office, before Mr. Burch, Mr. Rush, and Mr. Special Agent there, and Mr. Garrett, they was talking about several things, and up came this matter of them dots in the book at that time in 6-4, and, of course, the book had all passed from my mind, and I had been thinking of other lands and other things, and he handed me the book, and as I was turning over the pages I came to my own claim in there in the book, and I said to him, "Ed, that can't be so, because I

(Testimony of G. D. Hoseley.)

hadn't proved up, and they didn't have nothing to do with it," and he said to me, "Yes, you want to get out of something now," and I said, "Well, I don't; I never wanted to get out of anything in my life," I said that couldn't be, because I commenced to think that I had made final proof myself, and my claim was marked like the rest, and I was satisfied that that couldn't have been in the book when the book was handed to me.

Q. As I understand you now, you remember having told Mr. Garrett that the red dots in 6-4 were in the book that Mr. Barber gave you at Eau Claire, but that several days after that, when you found out that there was some dashes further over in the book that indicated your land, that it couldn't have been? A. Yes.

Recross-examination.

(By Mr. BUNDY.)

Q. So that, in looking at the book now, Mr. Hoseley, you find a great many pieces of land marked with red ink marks, including the scrip lands, your own lands, and other lands, which they didn't own at that time? A. Yes, sir.

Q. And you know that, so far as your own land and the scrip land is concerned, somebody has marked those in that book in red ink since it was given to you?

A. It's a fact; it can't be any other way.

Q. And from that you are convinced that any statement you may have made to the effect that the red ink marks were all in there was an error?

(Testimony of G. D. Hoseley.)

A. Yes, I didn't remember.

(Witness excused.)

At this time an adjournment was taken until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Mathias A. Zapp, on Behalf of the Complainant.]

MATHIAS A. ZAPP, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mathias A. Zapp?

A. Yes, sir.

Q. Where do you reside and what is your occupation, Mr. Zapp?

A. I reside at Idaho City; at present I have teams at work around there.

Q. Were you a county officer of Boise county during the years 1903, 4 and 5?

A. 1903 and 1904 I was county assessor.

Q. That means assessor of taxes?

A. Yes, sir, assessor and tax collector.

Q. Do you remember having received, during those years, taxes from a man by the name of Charles F. Koelsch?

A. Yes, sir.

Q. In what year, do you remember?

A. 1903.

Q. They were taxes for 1903, and were paid

(Testimony of Mathias A. Zapp.)

during the year 1903. Is that right?

A. Yes, sir.

Q. I show you this paper and ask you if you have ever seen that paper before?

A. Yes, sir, but not in 1903 and 4.

Q. When did you see that?

A. This was when I was deputy assessor, in 1905 and 6.

Q. And did you make that paper up yourself?

A. Not that one.

Q. Where did you see that?

A. That came to the assessor's office from Lyon Cobb.

Q. And did he bring it personally, or was it forwarded in a letter?

A. I don't remember positively whether he brought it or sent it.

Q. Then what did he say that it was?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, unless he says that he had some talk with him.

Mr. GORDON.—Q. Didn't I understand you to say that Mr. Lyon Cobb brought that paper to the assessor's office when you were assistant?

A. Yes, sir.

Q. What year was that?

A. I think in 1905.

Q. And did you see him bring it there?

A. Well, I don't know for sure whether I saw him bring it there, but that is a copy of the list of the lands that they wanted to pay taxes on.

(Testimony of Mathias A. Zapp.)

Q. And did he pay the taxes there at that time?

A. Well, he either paid the taxes there or went home and had the Barber Lumber Company send a check; sometimes he would fill out a check himself.

Q. In whose interest did he come to pay those taxes? A. The Barber Lumber Company.

Q. And did I understand you to say that this is a list of the property belonging to the Barber Lumber Company that Mr. Lyon Cobb wished to pay the taxes on? A. Yes, sir.

Q. I hand you a paper headed, "List of timber and stone entries upon which Charles F. Koelsch paid taxes in the year 1903," and ask you if you have ever seen that paper before? A. Yes, sir.

Q. And where did you see it? What is the paper?

A. This is a paper that I made out for Mr. Wade in 1906, either in 1906 or 1907, the 19th day of March, 1907.

Q. From what did you make that paper out?

A. From the assessment rolls.

Q. You made it out and compared it yourself?

A. Yes, sir.

Q. And at the end of that paper, on page 6, I note the signature of M. A. Zapp, and ask you if you signed that? A. Yes, sir.

Q. And swore to it? A. Yes, sir.

Q. I will ask you to read the jurat there that you swore to.

A. "M. A. Zapp, being duly sworn, and upon his oath, deposes and says that he was the duly elected

(Testimony of Mathias A. Zapp.)

and qualified assessor and collector of Boise county, Idaho, for the years of 1903 and 1904; that each of the above-named parties made timber and stone entries in said Boise county, Idaho, and that the taxes assessed to each of the above-named parties was paid by Charles F. Koelsch in the year 1903. That per the request of said Koelsch the tax receipts were issued in the name of each of the above-named parties."

Q. Do you remember now whether Mr. Koelsch—
Mr. BUNDY,—Are you going to offer that in evidence?

Mr. GORDON.—Yes, sir.

Mr. BUNDY.—I desire to object to it as incompetent, irrelevant, and immaterial, and ask that the jurat, so-called, read into the record by the witness, be stricken out, for the reason that the same is incompetent, irrelevant, and immaterial, and not the proper way to put in evidence the facts stated therein, and is not the best evidence or what Mr. Koelsch directed or requested, or as to the facts stated therein.

Mr. GORDON.—Q. I will ask you, Mr. Zapp, is it a fact that you were the duly qualified assessor and collector of Boise county for the years 1903 and 1904? A. Yes, sir.

Q. And do you know that each of the parties named in this paper that I show you made timber and stone entries in Boise county, Idaho, and that the taxes assessed to them were paid by Charles F. Koelsch in the year 1903?

(Testimony of Mathias A. Zapp.)

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and not the best evidence, calling for two facts, in one question, very dissimilar, and the further objection that the best evidence of who made timber and stone entries are the land office records, and the best evidence of who paid the taxes would be the direct evidence of that fact.

A. Well, Mr. Koelsch paid the taxes on that list for the year 1903.

Mr. GORDON.—Q. Well, were they timber and stone entries? A. Yes, sir.

Q. Did you issue a receipt to Mr. Koelsch for the aggregate amount of the taxes he paid you, or did you issue him a separate receipt for each individual piece that was paid, in the name of the party to whom the tax was assessed?

Mr. BUNDY.—I object to that as not the best evidence; the receipt is the best evidence.

A. I issued a receipt to each of the individual entrymen.

Q. Who did you give them to?

A. Mr. Koelsch.

Q. Upon whose request did you do that?

A. At Mr. Koelsch's.

Q. I will ask you to look at paper headed, "1904 list," and ask you if you have ever seen those papers before? A. Yes, sir.

Q. Is that your signature attached?

A. Yes, sir.

Q. And you swore to it before W. S. Wade?

(Testimony of Mathias A. Zapp.)

A. Yes, sir.

Q. I will ask you to read the jurat at the end of that?

Mr. BUNDY.—I object to reading the jurat. Are you going to put it in evidence? I object to that manner of putting in any facts stated in the jurat, as incompetent, irrelevant, and immaterial.

A. "State of Idaho,
County of Boise, ss.

M. A. Zapp, of lawful age, being duly sworn, and upon his oath, deposes and says that he was the duly elected and qualified assessor and tax collector for Boise county, Idaho, during the years of 1903 and 1904; affiant states upon his oath that the taxes assessed against each of the above-named parties on their respective timber land entries was paid by Frank Steunenberg, in the said year of 1904, the same having been paid by check No. 613, amount \$3643.57, on the First National Bank of Boise, Idaho; the tax receipts were issued in the name of each of the said above-named parties, per the request of the said Frank Steunenberg. Lyon Cobb was with the said Frank Steunenberg at the time said check in payment for the taxes assessed against the lands entered by the above parties was delivered to this affiant.

(Signed) M. A. ZAPP."

Q. That was true, was it? A. Yes, sir.

Mr. BUNDY.—Let me ask the witness a question. This that counsel has referred to as a jurat, attached to a long list of names, isn't any jurat that you ever attached in your official capacity, is it, Mr. Zapp?

A. Well, at that time I wasn't assessor.

No. 1883

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FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA (Complainant),
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),
(Defendant), Appellee.

VOLUME VIII.

(Pages 2801 to 3200, Inclusive.)

Upon Appeal from the United States Circuit Court
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Division.

(Testimony of Mathias A. Zapp.)

Q. This was dated in 1907? A. Yes, sir.

Q. And is merely an affidavit which you made at the request of some special agent of the Government? A. Yes, sir.

Q. And the list or copy that is attached, where did you get that?

A. From the assessment-rolls of 1903 and 1904.

Q. You went to the assessment-roll?

A. Yes, sir.

Q. And in 1907 made out a list of lands which, in your affidavit, you say was paid on in 1904?

A. Yes, sir.

Q. So that this document which has been shown you is nothing which you made in your official capacity then, as assessor and tax collector?

A. No, sir; I wasn't assessor at that time.

Mr. BUNDY.—I ask that the affidavit made before the special agent be stricken out, as incompetent, irrelevant and immaterial, and not competent evidence in this case for any purpose.

Mr. GORDON.—Q. I understood you to say, in response to inquiry of counsel for the defense, that you made up these lists from the assessment-books that were made when you were the assessor and collector? A. Yes, sir.

Q. And is it a fact that Frank Steunenbergh, in the year 1904, paid the taxes on the entries, on the timber and stone land entries of the parties named therein? A. Yes, sir.

Q. Did he pay it in person? A. Yes, sir.

Q. And that the same amounted to \$3643.57?

(Testimony of Mathias A. Zapp.)

A. Yes, sir.

Q. And do you remember that the check was on the First National Bank of Boise, Idaho?

A. Yes, sir.

Q. And that the tax receipts were issued in the name of each of the persons whose name is mentioned herein?

A. Yes, sir.

Q. Or appears herein?

A. Yes, sir.

Q. At whose request did you issue the receipts in the name of each individual party?

A. In 1904?

Q. Yes.

A. Mr. Frank Steunenberg's.

Q. And did you give him all of the receipts?

A. Yes, sir.

Q. And who did I understand you to say was with him when he paid that?

A. Mr. Lyon Cobb.

Q. I show you letter, dated Barber Lumber Company, Boise, Idaho, December 27, 1904, addressed Matt Zapp, signed Frank Steunenberg. I will ask you if you have ever seen that paper before?

A. Yes, sir.

Q. Where did you receive that? Where did you see it before?

A. In Idaho City, in the assessor's office, in 1904.

Q. Did it come through the mails?

A. Yes, sir.

Q. Do you know who sent it to you?

A. Mr. Steunenberg.

Q. Mr. Frank Steunenberg?

(Testimony of Mathias A. Zapp.)

A. Mr. Frank Steunenber.

Q. And I show you an envelope, addressed Hon. Matt Zapp, Idaho City, Idaho, printed at the top, Barber Lumber Company, Boise, Idaho, and ask you if you have ever seen that envelope before?

A. Yes, sir.

Q. I will ask you whether or not that letter was enclosed in that envelope? A. Yes, sir.

Q. Do you know where the list referred to in that letter is? A. No, sir.

Mr. GORDON.—We offer in evidence the list of timber and stone entries upon which Charles F. Koelsch paid taxes in the year 1903, which has been identified by Mr. Mathias Zapp; also the list attached, dated "1904 list," which has also been identified by Mathias A. Zapp.

(Marked Plaintiff's Exhibit No. 142A.)

Mr. BUNDY.—Before that is ruled on, I want to ask Mr. Zapp a few questions about it. Here appears to be a long list, headed, "List of timber and stone entries upon which Charles F. Koelsch paid taxes in the year 1903." Who made that?

A. I did.

Q. When? A. March 19, 1907.

Q. At or about the time the Grand Jury was in session here? A. I think it was.

Q. And you made it at the request of Mr. W. S. Wade? A. Yes, sir.

Q. Who was a special agent of the Land Department? A. Yes, sir.

Q. At that time, in 1907, were you an officer, a

(Testimony of Mathias A. Zapp.)

tax officer? A. No, sir.

Q. Had no official connection whatever with the office? A. Not with the assessor's office.

Q. And attached to this list is an affidavit, dated March 19, 1907, sworn to by you before Mr. Wade?

A. Yes, sir.

Q. Now, calling your attention to the paper marked, "1904 list," which contains a long list of names, who made that? A. I did.

Q. When? A. The same date.

Q. March 19, 1907? A. Yes, sir.

Q. At the request of the special agent?

A. Yes, sir.

Q. And attached to it your affidavit, which you have read into the record? A. Yes, sir.

Q. So that the entire document offered in evidence, consisting of the two lists, and your two affidavits, is a document prepared by you in March, 1907, after your term of office had expired?

A. Yes, sir.

Q. At the request of special agent Wade, for use, as you understood it, before the Grand Jury?

A. Well, I didn't understand; Mr. Wade didn't say what he was going to use it for.

Q. It wasn't made for use in any tax paying proposition? A. No, sir.

Q. Something that the special agent was looking up? A. Yes, sir.

Mr. BUNDY.—We object to it as incompetent, irrelevant, and immaterial, and not the best evidence.

Mr. GORDON.—We offer in evidence paper

(Testimony of Mathias A. Zapp.)

which has been identified by Mathias A. Zapp, lists of Barber Lumber Company lands, Boise, Idaho.

Mr. BUNDY.—Before this is offered or received, I would like to ask about this. This paper shown you, Mr. Zapp, headed “List of Barber Lumber Company lands, Boise, Idaho, who made that?

A. Well, I think Mr. Cobb made that.

Q. When did you first see it?

A. In the assessor’s office.

Q. And is that the list that Mr. Cobb brought to the assessor’s office to pay taxes on?

A. Yes, sir.

Q. When? A. In 1905 and 1906.

Q. Which was it, 1905 or 1906?

A. I am not positive of the year; every year that he would come he would bring a list with him.

Q. Showing the lands that they owned?

A. Yes, sir.

Q. And this is not a list then prepared from any official document?

A. Not from the assessment-rolls.

Q. But simply the lands that Mr. Cobb, representative of the Barber Lumber Company, wished to pay taxes on? A. Yes, sir.

Q. And they did pay taxes on them, didn’t they?

A. Yes, sir.

Q. And receipts were issued to them?

A. Yes, sir.

Q. At that time were they taking the receipts in their own name?

A. I think in 1905 they took it in the Barber

(Testimony of Mathias A. Zapp.)

Lumber Company; I am not positive, but I know they did in 1906.

Mr. BUNDY.—No objection to the last one.

(Marked Plaintiff's Exhibit No. 142B.)

Mr. KEIGWIN.—I should like to inquire whether counsel for the defendant make any question as to the fact that the taxes on these lands were paid by the Barber Lumber Company.

Mr. BUNDY.—They paid their taxes; I don't know anything about the list. They paid taxes on all the lands they owned, I believe.

Mr. KEIGWIN.—What I mean is this: Does your objection go to the fact that these documents put in evidence with the testimony of this witness are not sufficient evidence of the payment of taxes by the Barber Lumber Company?

Mr. BUNDY.—If you want an admission that the Barber Lumber Company paid taxes on their lands, we will give you that at any time.

Mr. KEIGWIN.—Why not stipulate that?

Mr. BUNDY.—We will stipulate that the Barber Lumber Company has paid taxes on all lands owned by it since it acquired them. The best evidence of what they owned is something besides Wade's affidavit.

Mr. KEIGWIN.—As I understand, you have a stipulation there to the effect that the taxes were paid by the Barber Lumber Company. Will you make that read, on all lands to which deeds have been shown in this cause?

Mr. BUNDY.—Yes, and a good deal more.

(Testimony of Mathias A. Zapp.)

Mr. KEIGWIN.—Well, that is all we care about. As I understand your objection, it looks as though you wanted us to bring those books down from Idaho City; I don't think you want that any more than we do.

Mr. BUNDY.—I am willing to admit that the Barber Lumber Company paid their taxes each and every year on all lands they owned; if they skipped any, it was a mistake. Mr. Keigwin, I can make that stipulation a little broader than that. We will stipulate that we paid all that were on the roll. I think there were a few that didn't get on in the year they should have.

Mr. KEIGWIN.—In the years 1903, 1904, 1905, and 1906?

Mr. BUNDY.—Let me ask Mr. Zapp a question. The first complete list that you had of the company's lands was the one furnished you by Mr. Cobb?

A. Yes, sir.

Q. That included lands that you never had before.

A. Well, it may have included a few lots that the land office may have overlooked, in sending in their abstract.

Q. Well, after Mr. Cobb furnished you that list, then you have had a list furnished you each year since by the company.

Mr. BUNDY.—We will stipulate that the Barber Lumber Company, either through Steunenberg, or Koelsch, or the company itself, have paid taxes each and every year on the lands shown on the list pre-

(Testimony of Mathias A. Zapp.)

pared by Mr. Cobb, and identified by the witness on the stand, since such lands were acquired by or became the property of the Barber Lumber Company and became subject to taxation.

Mr. GORDON.—We also offer in evidence the letter, dated December 27, 1904, on Barber Lumber Company paper, addressed to Matt Zapp, assessor Boise County, Idaho City, Idaho, signed Frank Steunenbergh, which has been identified by the witness Mathias A. Zapp, and also the envelop addressed to Hon. Matt Zapp, Idaho City, Idaho, which has been identified by Mr. Zapp, the witness.

(Marked Plaintiff's Exhibit No. 142C and 142D.)

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Zapp, what was the assessed valuation of a tract of 160 acres of timber land in your county during your official incumbency?

A. In 1903 I assessed them at \$400.

Q. That is a complete quarter section?

A. For a quarter section.

Q. And what was the annual tax on those?

A. The levy was \$3.50, \$14 taxes on each quarter section.

Q. What is the full name of the Mr. Cobb whom you have mentioned as coming to you with one of these lists?

A. Lyon Cobb.

Q. Is he an officer or employee of the Barber Lumber Company?

A. I presume he was their agent.

Mr. BUNDY.—He is an employee, and has been

(Testimony of Mathias A. Zapp.)

for years; I don't know in just what capacity, but he is in the office.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Steunenberg paid you with a check signed Frank Steunenberg, agent?

A. I didn't remember that there was "agent" attached to it; I think it was just Frank Steunenberg; I am not positive.

Q. Did Mr. Koelsch pay with his personal check or Steunenberg's?

A. His personal check, he drew on the First National Bank of Boise City.

Q. And did he tell you that he was acting for Steunenberg? A. No, sir.

Q. At that time, 1903 and 1904, I believe the deeds hadn't been put of record.

A. I don't know anything about that.

Q. You didn't examine into the records?

A. No, sir.

Q. The system you had here was, each spring the land office would send you assessors the names of timber and stone entries that had come to final proof and final receipt issued, and you then began taxing them? A. Yes, sir.

Q. And the assessments you made against these people were based on such information?

A. Yes, sir.

Q. Now, when do you make your assessment, as of what date?

A. Why, we have up till the first of July.

(Testimony of Mathias A. Zapp.)

Mr. FRASER.—But the assessment is made as of the first Monday in January of each year; it relates back to that time. A. Yes, sir.

Mr. BUNDY.—So that if a timber and stone entry was not finally completed or final proof issued until the first of February of any year, it wouldn't be taxable that year? A. No, sir.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Zapp, how long have you lived in Boise county? A. Most all my life.

Q. How far from Idaho City did you live in 1902 and 1903?

A. In 1902 I was in Garden Valley.

Q. How far is that from Idaho City?

A. Twenty-four miles.

Q. And in what year did you make your canvass for assessor? A. In the fall of 1902.

Q. What was the condition of the country up there with respect to fall of snow in the fall and winter of 1902? A. In the winter of 1902?

Q. Well, the fall of 1902, and the winter of 1902 and 1903.

A. Well, there was quite a heavy fall of snow in the winter, but not very early in the fall.

Q. How deep was the snow in the winter?

Mr. FRASER.—In what month; it varies over in that country.

Mr. KEIGWIN.—Let the witness state that.

A. I don't know; in different localities the depth would differ a whole lot.

(Testimony of Mathias A. Zapp.)

Q. How did it range in different localities and different seasons?

A. Well, around Idaho City the snow would be deeper than it was in Garden Valley.

Q. How deep was it around Idaho City, say in December of 1902 and January of 1903?

A. Well, in January, 1903, the snow was quite deep, because I remember moving in there.

Q. How deep was it?

A. Well, perhaps three feet in January, 1903.

Q. Do you remember anything about the depth of the snow in December, 1902?

A. Well, I couldn't tell positively.

Q. Do you know Edward Butler and George Butler?

A. Yes, sir.

Q. Do you know where the timber lands which they entered are situated?

A. No, not exactly; if I knew what sections they were located on, perhaps I could tell.

Recross-examination.

(By Mr. BUNDY.)

Q. The snow was different in different localities, I suppose, the same as it is any other place, up there.

A. Yes, sir.

Q. And when you say that the snow in January was three feet deep you don't mean that it was three feet deep on every quarter section up there?

A. Well, it was three feet in Idaho City, but as you went east or north it would be fully that deep, perhaps a little more.

Q. Up in the Crooked River country?

(Testimony of Mathias A. Zapp.)

A. It would be considerably deeper.

Q. Were you up in there in January, 1903?

A. No, sir.

Q. If I told you the quarter section that Mr. George Butler located on could you tell me how deep the snow was on it, in 1903?

A. No, sir, only the general conditions.

Mr. FRASER.—Q. You say in January, 1903, it was three feet deep in Idaho City. Three feet of snow will fall up there in a night or two, won't it?

A. It would fall in a short time some winters.

Q. The snow don't begin to fall there very heavy, Mr. Zapp, until January, February, and March. Aren't those the heavy months?

A. It differs; sometimes in December we will have a deep snow.

Q. Did you have a deep snow in 1902 in December, or did the snow come along the first of January?

A. Well, I couldn't tell you that exactly, because it is quite a while back to remember.

(Witness excused.)

[Testimony of L. G. Chapman, on Behalf of the Complainant.]

L. G. CHAPMAN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is L. G. Chapman?

A. L. G. Chapman.

(Testimony of L. G. Chapman.)

Q. And you are the manager of the Barber Lumber Company at Boise, Idaho? A. Yes.

Q. Mr. Chapman, when did you first come to Idaho?

A. In the late summer or early fall of 1903.

Q. Do you remember the month?

A. I think August.

Q. And what did you come for? To represent the Barber Lumber Company?

A. I came to represent the Barber Lumber Company.

Q. At that time did they have an office at Boise?

A. No.

Q. Well, in what capacity did you come in August, 1903?

A. I came as manager, with the intention of beginning active operations, construction work, and so forth.

Q. And did you open an office for the company while you were here that time?

A. No, I did not.

Q. This company had been organized in Wisconsin some time prior to that, had it not?

A. Yes.

Q. And do you remember when the articles of incorporation of the company were filed with the Secretary of State here? A. No, I don't.

Mr. GORDON.—That is a matter of record. I just wanted to get the date.

Mr. BUNDY.—You can get it probably from this here—May 16, 1903.

(Testimony of L. G. Chapman.)

Mr. GORDON.—Q. And on your first visit to Boise in 1903 how long did you remain?

A. I believe until about the 10th of November, or the 15th possibly.

Q. And during that time you hadn't established an office here, had you? A. No.

Q. And then did you return to Eau Claire, Wisconsin? A. To Stanley, Wisconsin.

Q. Were you in the employ of the Barber Lumber Company during that time; had you been employed by the Barber Lumber Company prior to your first visit here in August, 1903?

A. No.

Q. Were you a practical lumberman?

A. Yes.

Q. Do you remember when the Barber Lumber Company first opened an office here?

A. We opened an office here in August or September, 1904.

Q. And did you open that office yourself?

A. Yes.

Q. And you have had an office here ever since?

A. Yes.

Q. And you have been the manager—are you entitled the manager or the general manager?

A. Manager.

Q. And what are and have been your duties as manager of the Barber Lumber Company, Mr. Chapman?

A. The general direction of their affairs, their business affairs.

(Testimony of L. G. Chapman.)

Q. That is, you—I understand they have a mill here? A. Yes.

Q. And they have timber lands in various parts of Idaho, and everybody that has to do with that mill or these timber lands is under your supervision either directly or indirectly? A. Yes.

Q. Now, when did you first start keeping a set of books here?

A. The books here were opened in December, 1904.

Q. December, 1904? A. Yes.

Q. And I understand you said you came here in September?

A. It was either August or September, 1904.

Q. Now, prior to that date did you have letter-files here of the Barber Lumber Company?

A. No, sir.

Q. Did you have any bank accounts for the Barber Lumber Company prior to that time?

A. I had a small bank account here that was for them, in 1903, and left a bank account for G. D. Hoseley when I left here in 1903.

Q. Now, as near as you can remember of what did that bank account consist? I mean did it consist of three or four or five hundred dollars or three or four or five thousand dollars, or a large amount?

A. No, it was small. I think that I drew in amounts of five hundred or some such matter, and I think I left him something under a thousand.

Q. Now, as well as you can remember, from the time you came here in August, 1903, until you estab-

(Testimony of L. G. Chapman.)

lished your office here in the latter part of 1904, what did that bank account amount to in the aggregate, just round figures, as well as you can remember?

A. I think my account was probably in the neighborhood of \$1000 and Hoseley's probably \$1500.

Mr. BUNDY.—Q. You have those accounts, haven't you? A. Oh, yes.

Mr. GORDON.—Q. And that account was kept at what bank?

A. First National Bank of Idaho.

Q. Now, Mr. Chapman, I understand then that you had no bank accounts other than that you have testified to, and no letter-files or books of the company until you opened your office here in August or September, 1904.

A. No, probably some of the earlier correspondence eventually went into the files when the office was opened.

Q. They were just about the same letters that a man would get and carry about with him if he were on a visit, were they? A. Yes.

Q. Now, have you kept account of all the timber transactions and all moneys expended by or on behalf of the Barber Lumber Company in the books that you have had here since you opened a set of books in August or September, 1904? I mean since you first opened the books. A. Yes.

Q. Now, will your books show all salaries or fees paid any person, no matter what capacity they were employed in, on behalf of the Barber Lumber Company from the time the books were opened?

(Testimony of L. G. Chapman.)

A. Yes.

Q. And will your letter-files show all letters received upon business having to do with the business of the Barber Lumber Company or the acquiring of any timber lands by the Barber Lumber Company since you established your office or opened your books here? A. Yes.

Q. Now, Mr. Chapman, do your files show all letters or copies, either carbons or letter-press copies, of all letters written concerning the business of the Barber Lumber Company or the acquiring of those lands, or payment for them? A. Yes.

Q. And are all the books and papers, letters, checks, and so forth, of the Barber Lumber Company, and relating to the Barber Lumber Company's business in Boise, Idaho, still among the files and in the office of the Barber Lumber Company, at Boise, Idaho? I mean by that to include also the mill.

A. Yes, everything that has ever been here is still here.

Q. Were you here when Mr. Dennis Thornton first came to Idaho on business for the Barber Lumber Company? A. No.

Q. He had been here before you came, I understand? A. Yes.

Q. Will you state, as well as you can remember, the names of the persons that have been employed on behalf of the Barber Lumber Company, either by you or someone else, to do cruising and estimating of lands, timber lands, in Idaho, since you have been its general manager?

(Testimony of L. G. Chapman.)

A. Dennis Thornton, John O'Brien, W. R. Lake, James Murray, a man by the name of Bannister—I have forgotten his name. I believe that is all.

Q. And will your books show the dates of the employment of these various gentlemen that you have named and the amounts paid them for their services?

A. Yes, it will show the amounts paid for their services, and the number of days we paid them for.

Q. It won't show when they began, but from your books it can be assumed that the day you paid them and haven't paid them anything since that their services terminated then? A. Yes.

Q. Now, do you remember a man from Chipewa Falls by the name of Connors, C. B. Connors?

A. I don't know him except by reputation.

Q. Do you know whether or not he was employed to do any work in Idaho by the Barber Lumber Company?

A. Well, I knew that he had been out here, yes; I had heard that he had been here.

Q. Has he been here, employed in any capacity by the Barber Lumber Company, since you have been here? A. No,

Q. You understood that he had been here before you came the first time. Is that it? A. Yes.

Q. And do you know with whom he worked when he came here?

A. No, I don't. I don't know whether he had anyone with him or not. He was here, however, at the same time Thornton was here.

Q. Did he leave at the same time?

(Testimony of L. G. Chapman.)

A. I don't know as to that; they were here the same summer.

Mr. KEIGWIN.—Q. He has not been here since that summer? A. Not that I know of.

Mr. GORDON.—Q. Now, whenever you had an estimate made of timber lands by any of these gentlemen that you have named, they gave you the figures or the estimates they made, did they?

A. Yes.

Q. And you have them at your office, have you, here? A. Yes.

Mr. BUNDY.—I guess you took some of them.

Mr. GORDON.—Yes, I had a bunch with a rubber on them and I put them upstairs.

Mr. GORDON.—Q. And all of those estimates that were made, have you kept them in the same form that they were given to you?

A. You mean without alteration?

Q. No, I didn't mean that. I mean that you kept them all together, for instance, each cruising.

A. I don't know whether they have always been the same. The information was taken from them, and they were filed away carelessly.

Q. Well, the information you took from these estimates that had been made for you by the cruisers or estimators you copied on cards, and, as I understand, have a card index of them?

A. Yes.

Q. When the books were opened here by you, when you started a set of books for the Barber Lumber Company here, I understand that you were

(Testimony of L. G. Chapman.)

charged with an account of expenditures of money, and that that account had been previously kept in some other set of books back east?

A. Yes.

Q. Now, will you explain what that was?

A. They sent here transcripts of their books.

Q. You mean their ledger transcripts?

A. No, their journal and cash-book transcripts.

Q. Their ledger also?

A. No, I don't think so. All such accounts as it was necessary for us to have here to open a set of books, showing the items and the amounts to be charged to each account, and the amount that the Boise office was indebted, the balance for which the Boise office was indebted to the Eau Claire office.

Mr. KEIGWIN.—Q. You mean that the Barber Lumber Company furnished you with transcripts from their books at Eau Claire showing the accounts that were necessary for you to have here in opening a new set of books here? A. Yes.

Mr. BUNDY.—Q. Now, was that the Barber Lumber Company or the Northwestern Lumber Company?

A. It came to us as from the Barber Lumber Company. Whether they kept it on a set of books of their own or whether they kept it on the Northwestern Lumber Company books I don't know.

Q. And you don't know enough about the way they kept the books there of your own knowledge to know whether they kept a set of books there of their own at that time, or whether this account was kept

(Testimony of L. G. Chapman.)

upon the books of the Northwestern Lumber Company and charged to the Boise office, do you?

A. No.

Q. Mr. Chapman, I show you a book printed on the cover "Land Examiner's Sectional Record Book No. 1200," and written in lead pencil on the fly leaf is "C. B. Connors, Chippewa Falls, Wisconsin, July, 1902." I will ask you to look through this book and ask you if you can tell who made the estimates on that property?

A. Well, I can't tell. I assume that it was made by Connors.

Q. Well, would your records show who they were made by?

A. Yes, they would show these as made by Connors.

Q. Your card index?

A. Well, I think they would.

Q. You spoke of James Murray, I understood you to say,—

A. Yes.

Q. Having made some estimates for you. Did he make any estimates for you other than the estimates which you received from the Payette Lumber Company?

A. Yes, he made a few for us recently.

Q. That was what you had reference to?

A. Yes.

Mr. GORDON.—Q. I have a book here that is marked in red letters "6-4," and underneath that, in lead pencil, "Thornton," in parenthesis, also in pencil, "not carded," end of parenthesis, "Connors," and I will ask you if Thornton and Connors made

(Testimony of L. G. Chapman.)

the estimates for you or for the Barber Lumber Company contained in that book? (Hands witness book.)

A. They undoubtedly did. I don't know which one, or how they determine which one made the different estimates, or whether they were all by one. Some of them have been signed and some of them haven't.

Q. Are you familiar enough with the handwriting of Connors and Thornton to express an opinion as to which one or both of them made those estimates in there?

A. In my judgment, the whole thing was made by Connors. I think that was all made by Connors.

Q. I notice on the other side of the book is "C. B. Connors, Chippewa Falls," written in lead pencil. I hand you what appears to be estimates of one James Murray, made in October, November and December, 1904, upon lands in 6-4, 6-6, 7-5, 7-8, 6-7 and 6-6, and ask you where you received those papers from?

A. Those were given us by the Payette Lumber Company.

Q. And I notice in the last column on the right of each of the sheets I have handed you, sheets of paper I have handed you, numbers which appear to be the estimates made by some one else. Is that correct?

A. Yes, sir.

Q. And the estimates of Mr. Murray are on 6-4, the first page here, compared with those of Mr. Connors. Is that correct?

(Testimony of L. G. Chapman.)

A. Well, they were from this line (indicating) down. I think these marked "L" are Lake.

Q. In other words, when that was given you by the Payette Lumber Company people you had had cruising made prior to that by other cruisers, and you have followed, put opposite, the respective signatures the estimate that had been given you by your cruiser, estimator?

A. Well, we did in this case.

Q. I mean in these papers we are looking at.

A. I would add that there was another cruiser by the name of Dickey that did some work for us, that I had forgotten.

Mr. GORDON.—Complainant offers in evidence the book entitled "Land Examiner's Sectional Pocket Record Book No. 1200," and which contains on the fly leaf, in pencil, "C. B. Connors, Chippewa Falls, Wisconsin, July, 1902," having been identified by Mr. Chapman.

(Book marked Plaintiff's Exhibit No. 143A.)

Mr. GORDON.—We also offer book marked, in red lead pencil, on the first page "6-4," in black lead pencil below appears the name "Thornton," parenthesis, "Not carded," "Connors," which has been identified by Mr. Chapman.

(Book marked Plaintiff's Exhibit No. 143B.)

Mr. GORDON.—We also offer the estimates made by James Murray, October, November and December, 1904, which have been identified by Mr. Chapman.

(Marked Plaintiff's Exhibit No. 143C.)

(Testimony of L. G. Chapman.)

Mr. GORDON.—Q. Mr. Chapman, these three exhibits that have just been offered are from the files of the Barber Lumber Company office at Boise, Idaho, are they not? A. Yes.

Q. I will ask you, Mr. Chapman, how large a force you have under pay here for the Barber Lumber Company in the office?

A. Well, the office force would be from three to five persons.

Q. And it has been said here on several occasions that Lyon Cobb is employed in that office.

A. Yes.

Q. How long has he been there?

A. He has been there since we opened the office in 1904.

Q. In what capacity is he employed, clerk?

A. Yes, variously.

Q. And he is the son of Calvin Cobb, the editor of the "Statesman," is he? A. Yes.

Q. Mr. Chapman, has either John I. Wells or Mr. Patrick H. Downs been in the employ of the Barber Lumber Company in the last three or four years in any capacity whatever?

A. John I. Wells was not, and Downs was not, unless he posted some scrip within that time. I am not sure just what dates that last work was done.

Q. And neither of them have been paid any money by either you yourself or on behalf of the Barber Lumber Company?

A. On behalf of myself?

Q. Or the Barber Lumber Company?

(Testimony of L. G. Chapman.)

A. Well, I have loaned them money. I have never paid any of them money.

Q. The loans have just been small loans?

A. Small loans.

Mr. KEIGWIN.—Q. Personal loans?

A. Personal loans.

Mr. GORDON.—Q. Mr. Chapman, you were served with a subpoena duces tecum in this cause on February 26, 1909. Is that correct?

A. Yes.

Q. What return have you made to that subpoena?

A. We have produced the transcript entire of our pine land account, which covers the purchase price of all the timber lands purchased for the company.

Mr. KEIGWIN.—Q. From what date, Mr. Chapman?

A. Complete to the 31st of December, 1908.

Mr. KEIGWIN.—Q. From the beginning of the purchase of timber lands in this State?

A. Yes. What we call our Northern Pacific land deal No. 1, and Northern Pacific land deal No. 2, which covers a transaction in scrip applicable to unsurveyed lands which is complete as of December 31, 1908; the account in full as of December 31, 1908, with Frank Steunenberg; the account in full as of December 31, 1908, of our attorney's fees account. We haven't it finished, but we will produce the transcript in full as of December 31, 1908, of the land expense account, which covers the cost of cruising and other incidental expenses. We have finished and produced transcript of the journal entries which

(Testimony of L. G. Chapman.)

were given us at the time of the transfer of the accounts from the Eau Claire office to the Boise office and the opening of the Boise books, covering the account at that date as between the Boise office and the Eau Claire office, and the amounts charged to the general expense account.

Mr. BUNDY.—You had better explain maybe a little as to what these show as to items and dates, whether—

A. The transcripts of the pine land account, Northern Pacific land deal No. 1, Northern Pacific land deal No. 2, Frank Steunenberg, attorneys' fees, and land expense, show in detail all and every entry made on the books of the Barber Lumber Company at the Boise office from the time of opening until the 31st of December, 1908, and these accounts include all the payments made for timber lands now owned by the Barber Lumber Company in Idaho. These accounts include in detail the charges made on the Eau Claire books before the opening of the books in Boise, and which were transferred to the books at Boise at the time of their opening.

Mr. BUNDY.—What else have you produced besides the transcript, in answer to this subpoena?

A. The correspondence had between the Boise office of the Barber Lumber Company and James T. Barber, its president, S. G. Moon, secretary, F. H. L. Cotton, cashier, A. E. Palmer, George S. Long, John Bates, and Pendergast & Clarkson,—

Mr. BUNDY.—Aren't there some there from Rand too?

(Testimony of L. G. Chapman.)

A. (Continuing.) —which bears upon the acquiring of or perfecting title of timber lands in the State of Idaho.

Mr. GORDON.—Then I understand that these letters which you have here and have referred to are all the letters that you have in your files in the office of the Barber Lumber Company, at Boise, Idaho, that have any bearing upon the acquiring of any and all lands of the Barber Lumber Company in the State of Idaho?

A. Timber lands, yes, to the best of my knowledge and belief.

Mr. BUNDY.—There are the Rand matters that ought to be there and are not there.

Mr. GORDON.—Aren't they on file in the Borah case?

The WITNESS.—I think they are.

Mr. GORDON.—And the letters that you have here include copies of all letters written by you, as manager, or written by anyone else on behalf of the Barber Lumber Company and on the files of your office? A. Yes.

Mr. BUNDY.—Right in there let me ask Mr. Chapman a question. When you first came out here, Mr. Chapman, on your first trip, and on your arrival here the first time, you wrote a good many letters, did you not, before you had an office established, of which no copies were kept? A. Yes.

Mr. KEIGWIN.—But these include all letters written from your office since you have had a permanent office established in this city? A. Yes.

(Testimony of L. G. Chapman.)

Mr. KEIGWIN.—And these accounts which you have shown us, I understand include all the accounts you have which bear upon the acquisition of title under the timber and stone land act in this State?

A. Yes.

Q. And they show all disbursements which have been made by or on behalf of the Barber Lumber Company from the beginning of their acquiring title in this State?

A. They do as far as our books are concerned, as far as I know.

Q. As I understand, when you opened a set of books you were furnished with statements which purported to show all previous disbursements made by the Barber Lumber Company on account of timber lands in this State?

A. Yes.

Q. And those statements you carried into your books?

A. Those statements were carried into our books in full.

Q. And these papers which you furnish now are copies of the entries as you find them in your books?

A. Yes.

Q. Do you mean that you have examined them personally or simply looked over them generally?

A. Well, I checked them over.

Mr. GORDON.—And these statements include all—purport to be a statement of all the money spent by Barber and Moon in connection with acquiring timber lands in Idaho, do they?

A. Yes.

Q. I mean James T. Barber and Sumner G. Moon.

A. Yes.

(Testimony of L. G. Chapman.)

Mr. KEIGWIN.—So that you have, as far as lies in your power, complied with all the requirements of the subpoena duces tecum? A. Yes.

Mr. GORDON.—Q. The subpoena calls for, first, all stock-books or other records, showing owners, past and present, of the stock of the said Barber Lumber Company, and all transfers and assignments of the stock thereof. Have you produced those books and papers, Mr. Chapman? A. No.

Q. Do you know where those books and papers are?

A. I presume they are in the custody of the secretary, Mr. Moon, at Eau Claire.

Q. Have those books and papers ever been in your possession and custody? A. No.

Q. The subpoena next calls for all books, records, papers and correspondence of the Barber Lumber Company, or any officer, agent or attorney thereof, relating to the acquiring and perfecting of title by and in the Barber Lumber Company to timber and other lands in the State of Idaho. Now, I understood you to say that you have produced all books, records, papers and correspondence of the Barber Lumber Company relating to the acquiring and perfecting of title to the lands of said company in the State of Idaho that you have in your possession and custody.

A. Yes, the transcripts of the books, and the correspondence.

Q. Have you produced all of the books and papers relating to that part of the subpoena I have

(Testimony of L. G. Chapman.)

just read that you ever had in your custody?

A. Yes.

Mr. BUNDY.—Well, now, that would call for the deeds, and, of course, he hasn't the deeds. You have them practically all, and there are some others probably that you haven't that he hasn't produced. I presume that would call for deeds.

Mr. GORDON.—My purpose in this is to, at present, find out whether we have got all, and if we haven't, whether he has had them, or whether he knows where they are.

Mr. GORDON.—The next item in the subpoena calls for all records, accounts and correspondence with every officer, employee, representative, agent or attorney engaged in or employed for the purpose of acquiring title by, or perfecting title in, the Barber Lumber Company, Horace S. Rand, Albert E. Palmer, George S. Long, or any or either of them, to the timber or other lands in the State of Idaho, and all accounts with and payment or payments made to or by any and all of the said officers, employees, representatives, agents or attorneys in and about the said business of acquiring title for or perfecting title in the said persons or corporation, or either or any of them, to timber or other lands in the State of Idaho. I will ask you if you have produced all the books, papers and correspondence, and accounts, called for in this third item which I have just read to you?

A. Yes, with the exception of the Rand letters.

(Testimony of L. G. Chapman.)

which don't seem to be there; I believe you have them—and always excepting the millsite properties, which lands, timber and other lands, we haven't paid any attention to millsite properties.

Q. Have you any letters you have received from Horace S. Rand, or copies of any letters you have written to Horace S. Rand, that you have not produced relating to this?

A. I thought they were with this bunch, but apparently they are not.

Q. I will state that all the letters and things that were used in the Borah trial that referred to some transactions with Rand are on file in that office. And you will say with the exception of that, will you? A. Yes.

Q. And have you produced all the letters that you have in your possession relating to the acquiring of the timber lands of the Barber Lumber Company in Idaho, received from Albert E. Palmer?

A. Yes.

Q. And copies of all letters concerning the same subject written by you or anyone else on behalf of the company to Albert E. Palmer? A. Yes.

Mr. BUNDY.—Of course, they are in this office.

A. Yes.

Mr. GORDON.—I mean only relating to what he has in his office. Now, about the matters referred to in this third item; that had to do with the acquiring of the timber lands of the Barber Lumber Company, in Idaho, with George S. Long? A. Yes.

(Testimony of L. G. Chapman.)

Q. And you never had any others in your possession or custody other than those that you have produced or explained with reference to their whereabouts? A. No.

Q. The fourth item in the subpoena calls for any and all books, records, and papers of the Barber Lumber Company, or any agent, attorney or officer thereof, showing the payments made on account of the purchase of any and all timber and other lands in the State of Idaho, for or on behalf of the said Barber Lumber Company or either or any of the persons above named, and to whom such payment or payments were made, and the manner of such payment. A. Yes.

Q. Now, will these copies of the records of your books in the office show payments made on account of the property of any and all timber lands in the State of Idaho, for and on behalf of the Barber Lumber Company or any of the persons above named?

A. Yes.

Q. And to whom such payments were made?

A. Yes.

Q. And the manner in which such payments were made? A. Yes.

Q. I will ask you if you have complied with the fifth item of the subpoena duces tecum, which I shall read, and how? "Any and all options, contracts and agreements, made by or on behalf of the Barber Lumber Company, or any attorney, agent, or officer thereof, with any person, association, agent,

(Testimony of L. G. Chapman.)

officer, representative, employee, or attorney, in reference to the acquiring of timber and other lands in the State of Idaho, and also all and any options, contracts, or agreements, relating to the acquiring of title to timber and other lands in the State of Idaho, to which options, contracts, or agreements any person who thereafter became an officer, director, or stockholder of the Barber Lumber Company, thereafter incorporated, was a party, and in any way relating to any lands acquired by the Barber Lumber Company in the State of Idaho."

A. We had nothing of that kind in our possession.

Q. By the production of the papers, and copies of records you have produced here, have you complied with this item of the subpoena, directing you to produce any and all cash-books, ledger accounts, bank-books, bank drafts, company or individual notes, cancelled checks, and stubs, of any and all check-books of the said Barber Lumber Company, or any officer thereof, showing any and all payments to any person, firm, or corporation on account of acquiring and perfecting title to timber and other lands in the State of Idaho by the Barber Lumber Company, or by either or any of the persons above named?

A. Well, what we produce here covers it all except the stubs and cancelled checks. These transcripts of the books show the record of the issuance of all checks.

Q. We don't care for the cancelled checks, and I

(Testimony of L. G. Chapman.)

understood you to say that you would bring the stubs of the checks in to-morrow? A. Yes.

Q. Now, have you produced all the books, and so forth, just read to you concerning that part of the subpoena duces tecum that you ever had in your possession? A. Yes.

Q. Mr. Chapman, have you produced here all correspondence you have ever had in your possession of the Barber Lumber Company, or any officer thereof, with any officer, attorney, employee, or representative, or agent of the said company in reference to the acquiring and perfecting of title to any timber or other lands in the State of Idaho? A. Yes.

Q. Have you produced the articles of incorporation and the by-laws of the Barber Lumber Company, and the minutes and records of the meetings of the stockholders and directors of the said Barber Lumber Company, from the date of its organization, that you have ever had in your possession.

A. We have never had any in our possession.

Q. Have you ever had in your possession, at any time, all maps, plats, and tract or abstract books showing the lands and timber, and estimates of timber and lands owned by or claimed by, or held in trust for the said Barber Lumber Company, or any of them?

A. No, we didn't bring up any plats.

Q. I think my sentence started out—

(Last question head by the stenographer).

A. We have maps and plats showing that.

(Testimony of L. G. Chapman.)

Q. Have you abstract-books?

A. No, we haven't.

Q. Now, how about the estimates?

A. Well, everything we have ever had is in Boise with the exception of a few that Thornton has up in the Basin with him. Everything we have ever had was in that package of original estimates, we ever had are in there except a few that Thornton has with him in the Basin for re-estimate.

Q. And those that Dennis Thornton has with him now, can you tell what lands those estimates cover?

A. I can't tell you what lands they cover, but they were the estimates made by Dickey.

Q. I mean can you tell the towns?

A. I think they were in 6-4, 6-5, and 7-5, and some in 5-5.

Q. Now, can you look at your card index and tell more definitely which ones he has, or did he take them out of the card index?

A. No, our cards are still there. He simply took these to locate the lands on which Dickey had made estimates and re-estimate them.

Q. Is that what he is doing now?

A. Yes, that is what he is doing now.

Q. And when did Dickey make his estimates?

A. In 1906, I think.

Q. Some of the late estimates? A. Yes.

Q. Did you ever have any minutes or records of the meetings of the stockholders and directors of the Barber Lumber Company? A. No.

Q. Where do the stockholders and directors of

(Testimony of L. G. Chapman.)

the Barber Lumber Company hold their meetings?

A. Well, I think usually in Eau Claire, but I don't know whether they hold meetings any other place or not.

Q. They have never held any here to your knowledge, have they? A. No.

Q. Have you now, or have you ever had, in your possession maps, plats, and tract or abstract books showing the lands and timber and estimates of timber on lands owned by, claimed by, or held in trust for the Barber Lumber Company?

A. We have the maps and plats. We have no abstract books. We have the estimates, but separate from the plats and maps.

Q. And the maps and plats that you refer to, are they all on one plat now?

A. Well, we have a map which shows all.

Q. Now, with such qualifications as you have made, have you produced all the originals, duplicates, and all copies, letter press, carbon, or otherwise, of any and all the aforesaid books, records, documents, letters, correspondence and papers, from the organization of the Barber Lumber Company down to and including the year 1908, now in your possession or under your control, or in the possession or under the control of any agent, employee, representative, attorney, or officer of the said Barber Lumber Company, relating to the acquiring by the said Barber Lumber Company of title to timber or other land situated in the State of Idaho?

A. Yes.

(Testimony of L. G. Chapman.)

Q. All that you have in your possession or have ever had in your possession and under your control?

A. Yes.

At this time an adjournment was taken until 10 A. M., Thursday, March 4, 1909.

[Proceedings Had March 4, 1909.]

Court met on Thursday, March 4, 1909, at 10 A. M., pursuant to adjournment, the Examiner and counsel for the respective parties being present, at which time an adjournment was taken until 2 P. M. of the same day.

Court met at 2 P. M., pursuant to adjournment, the Examiner and counsel for the respective parties being present;

Whereupon counsel for the complainant produced and offered in evidence two ledger accounts, showing the account between Frank Steunenberg, "Personal," and Frank Steunenberg, "Agent," and the Commercial Bank of Caldwell, Idaho, together with a number of checks purporting to be drawn by the said Frank Steunenberg, and a number of stubs purporting to correspond with some of the said checks.

[Recital Re Stipulation Re Certain Checks, Accounts, etc.]

Whereupon, it is stipulated in open court, by and between counsel for the respective parties, that the following statement correctly shows the dates of issuing certain of the checks drawn by Frank Steunenberg, "Personal," and certain of the checks drawn by Frank Steunenberg; "Agent," and cor-

rectly shows certain of the charges made against him personally and as agent by the Commercial Bank of Caldwell, Idaho, and the date of payment of each such check which was paid, and correctly states the amount of each such check and the payee of each such check, and when so stated the stubs and checks contain the notations thereon indicated under the column headed "Remarks"; that complainant has produced the checks and stubs indicated by the following statement under the head "Remarks," except where it is noted that such checks or stubs are not produced.

It is further stipulated that such ledger accounts of the bank indicate the checks paid, which payments are correctly recorded under the column "Remarks."

It is further stipulated that all of the checks and stubs referred to in the following statement are in the handwriting of the said Frank Steunenberg, and that all checks subsequent to February 11, 1903, were drawn against and paid out of the account of Frank Steunenberg, "Agent," except where noted under the column "Remarks" that the check referred to was personal; that the said ledger accounts are true and correct statements of the accounts of Frank Steunenberg, "Personal," and Frank Steunenberg, "Agent," with said bank in so far as the same contains the items contained in the following statement.

It is further stipulated that the charge of February 14, 1903, aggregating \$20,155, debiting Frank Steunenberg with checks \$20,155, was a transfer of

checks to that amount from his personal account, which checks were drawn respectively February 10, February 11, and February 12; and that the charge against Frank Steunenberg, "Agent," of \$1,900, under date of February 17, 1903, is a like transfer of the following checks drawn against his personal account:

Check to W. E. Borah, dated January 27, 1903, \$800.

Check to W. E. Pierce & Co., dated February 2, 1903, \$200.

Check to W. E. Pierce & Co., dated February 5, 1903, \$900.

This stipulation is not intended as an admission by either party that the notations on the stubs or checks correctly indicate the purpose for which such checks were actually used; nor is it intended to take the place of such bank accounts as evidence, which accounts show many items not shown on this statement.

It is further stipulated that said bank accounts show the following deposits by Frank Steunenberg, "Personal," and Frank Steunenberg, "Agent," on the following dates, to wit:

DEPOSITS OF FRANK STEUNENBERG.

Personal.

March	8, 1901	\$	11.77
April	5, "		500.00
"	19, "		1,000.00
May	6, "		25.00
Dec.	5, "		2,000.00
"	14, "		40.30

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Jan.	17,	1902.....	300.00
Feb.	2,	"	100.00
"	24,	"	15,000.00
Mar.	18,	"	15,000.00
"	22,	"	175.00
Apr.	14,	"	5,800.00
June	4,	"	30.00
"	27,	"	5,000.00
July	2,	"	5,000.00
"	9,	"	5,000.00
"	14,	"	1,000.00
"	16,	"	140.27
"	23,	"	15,000.00
"	28,	"	175.00
Aug.	25,	"	150.00
"	29,	"	360.00
Oct.	1,	"	4,646.97
"	4,	"	5,000.00
Nov.	7,	"	1,000.00
"	8,	"	3,029.07
"	20,	"	2,000.00
Dec.	2,	"	6,000.00
"	15,	"	198.48
Jan.	15,	1903.....	48.52
"	26,	"	200.00
"	27,	"	240.00
Feb.	13,	"	20,155.00
"	17,	"	1,900.00
Mar.	16,	"	16.00
"	26,	"	1,000.00
Apr.	3,	"	10,000.00
"	18,	"	50.00

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May	11,	"	11.00
July	21,	"	1,331.27
Oct.	26,	"	25.00
Nov.	16,	"	65.00
	"	16,	"	18.75
	"	30,	"	40.00
Dec.	26,	"	15.22
Jan.	4,	1904	1,800.00
	"	18,	"	0.60
	"	26,	"	500.00
Feb.	25,	"	.....	3,500.00
Mar.	25,	"	.....	250.00
May	20,	"	.....	243.48
July	28,	"	.....	500.00
Aug.	10,	"	.....	1,700.00
	"	22,	"	350.00
Oct.	5,	"	.....	7.75
	"	31,	"	7.85
Jan.	14,	1905	.....	513.85
Mar.	10,	"	.....	700.00
	"	21,	"	250.00
Apr.	21,	"	.....	2,311.15
June	19,	"	.....	1,031.50
Aug.	12,	"	.....	500.00

DEPOSITS OF FRANK STEUNENBERG.

Agent.

February	11,	1903	.....	\$20,000.00
	"	14,	"	25,000.00
	"	17,	"	100.00
March	16,	"	.....	20,000.00
April	8,	"	.....	10,000.00
May	6,	"	.....	7,500.00

August	5,	“	.....	8,000.00
September	18,	“	.....	1,500.00
	“	23,	“	..... 1,000.00
October	9,	“	.....	10,000.00
December	17,	“	.....	5,000.00
	“	23,	“	..... 4,500.00
	“	29,	“	..... 5,000.00
January	4,	1904,	.....	5,000.00
April	18,	“	.....	2,000.00
February	8,	1906,	.....	3,022.59

It is further stipulated that said bank accounts show a continuous overdraft in the account of Frank Steunenberg, “Agent,” from August 18, 1904, until the time of his death on December 30, 1905, and that his personal account at the time of his death showed the credit balance of \$4,293.57, and that the deposit made to the credit of the account of Frank Steunenberg, “Agent,” on February 8, 1906, for \$3,022.59, paid the overdraft and balanced the account to that date.

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FRANK STEUNENBERG, ACCOUNT, COMMERCIAL BANK OF CALDWELL, IDAHO.

Date.	Amount.	Remarks.
March 18, 1902.....	\$3,000.00	Bank statement reads "cash to Kinkaid. No check, no stub.
" 21 " 	15.00	" " " " "
" 26 " 	2,000.00	Bank statement reads "self."
April 8 " 	800.00	Bank statement reads "Fst. Nat. Id." no check, no stub.
" 19 " 	825.00	To John I. Wells, for "acct. Kinkaid." No check. Not on bank statement. See stub book No. 1.
" 19 " 	25.00	To C. H. Arbuckle, for "advance." Bank statement shows check was paid May 6, 1902, Check is missing.
May 6 " 		
" 2 " 	10.00	To Idanha, for board 4 d.
" 5 " 		Check missing. Bk. statement shows payment May 5, 1902.
" 9 " 	150.00	To C. H. Arbuckle, for "acct. Timber."
" 12 " 		Bk. statement shows payment of check. Check missing.
" 9 " 	2.50	To Idanha, "for board."
" 12 " 		Bank statement shows payment of check.
" 12 " 	20.00	Date May 12 to May 15, for John I. Wells.
" 17 " 		Bank statement shows payment of check. Check missing.
" 16 " 	5.00	Idanha Hotel, for Exp. no check. Stub book 1.
" 16 " 	8.25	To Idanha, "for board." Check missing.
" 23 " 	11.00	To Idanha, "for Board Exp." Bank statement shows Ck. paid May, 26. Check missing.
June 7 " 	2500.00	John Kinkaid, "for Exp. timber."
" 10 " 		Bk. statement shows Ck. paid. Ck. endorsed by Kinkaid.
" 17 " 	1200.00	To First Natl. Bank, "for Timber."
" 18 " 		Bk. statement shows payment of check. Check in envelope.
" 17 " 	17.00	To Idanha, "for Exp." Bk. statement shows payment of check. Check in envelope.
June 21, 1902.....	5.00	To Idanha "for Exp. timber." Bk. statement shows payment of check. Check in envelope.
June 23 " 	2000.00	To self, "for timber." Bk. statement shows check A. K. S. paid June 23, check to A. K. Steunenberg, Cashier. Check in envelope.

Date.		Amount.	Remarks.
"	25	" 5.75	To Idanha, "for board." Bk. statement shows payment of Ck. Check in envelope.
"	27	" 5000.00	To "A. K. S. Cashier."
"	27		Bk. statement shows payment of check. Check in envelope.
July,	1	" 75.00	To self, "for Exp."
"	1	"	Bk. statement shows payment of check. Check in envelope.
"	5	" 10.50	To Idanha Hotel "For board." Bank statement, Check in envelope.
<hr/> 5.00			Exchange charge. No check. No stub. Debit Frank Steunenber, Exchange on Spokane.
July,	7, 1902	..... 2500.00	To Bk. Commerce, "For Timber Kin- kaid."
"	10	"	Bk. statement shows payment of check. Check in envelope.
"	7	" 2.50	To Idanha Hotel, "For Board."
"	9	"	Bk. statement shows payment of check. Check in envelope.
"	9	" 2000.00	To Commercial Bank, "For Kinkaid."
"	9	"	Bank statement shows payment of check. Check in envelope.
"	18	" 2500.00	To Self. "First Natl. For Kinkaid."
"	19	"	Bank statement shows payment of check to Geo. Redway, Cashier. Check to Geo. Redway, Envelope.
"	23	" 1500.00	To Self. "For Acct. K."
"	23	"	Bank statement shows "CASH." Check in envelope.
"	23	" 1000.00	"To A. K. S. Cashier."
"	24	"	Bank statement shows "A. K. S. Cashier. Check in envelope.
"	24	" 3500.00	"To Wm. Sweet, for advance."
"	28	"	Bank statement shows payment of check. Check in envelope.
August,	1	" 1500.00	"To WM. Sweet, for Acct. K."
"	6	"	Bank statement shows payment. Check in envelope.
August,	4, 1902	..... 2500.00	"To A. K. S. For Acct. K. Sweet."
"	5	"	Bank statement shows payment. Check in envelope.
"	5	" 150.00	"To Self. For trip St. Paul."
"	5	"	Bank statement shows payment. Check in envelope.
"	8	"	"To Wm. Sweet. For Acct. K."
			No check. No payment.
"	21	" 1000.00	"To Bank. For K."

Date.		Amount.	Remarks.
"	21	"	Bank statement shows payment to Commercial Bank.
"	25	" 50.00	"To Self. Exp. Timber."
"	25	"	Bank statement shows payment of check. Check in envelope.
"	26	" 25.00	To H. A. Griffiths. "Advance."
"	30	"	Bank statement shows payment of check. Check in envelope.
"	27	" 3250.00	"To John Kinkaid. For acct. Timber."
"	29	"	Bank statement shows payment of check. Check in envelope.
Sept.	1	" 10.00	To Idanha Hotel. For Exp.
"	3	"	Bank statement shows payment of check. Check missing.
August,	2	" 10.00	"To Idanha Hotel, for Exp."
Sept.	5	"	Bank statement shows payment of check. Check missing.
"	9	" 25.00	"To Self. For Exp."
"	10	"	Bank statement shows payment of check. Check missing.
"	16	" 20.00	do do do
"	18	"	" " "
"	22	" 20.00	" " "
"	23	"	" " "
"	29	" 24.30	"To Mrs. Gillespie. For Lodging."
Oct.	1	"	Bank statement shows payment of check. Check missing. (R. P. Gillespie)
Sept.	29	" 22.00	"To Mrs. Branstetter. For Board."
Oct.	4	"	Bank statement shows payment of check to Mrs. Mary Branstetter. Check missing.
Oct.	1	" 20.00	"To Self. For Exp."
"	2	"	Bank statement shows payment of check. Check missing.
"	7	" 10.00	" " "
"	10	"	" " "
"	10	" 20.00	" " "
"	10	"	" " "
Nov.	6	" 1000.00	"The Commercial Bank, Caldwell, Idaho. Debit Frank Steunenberg."
Nov. 10, 1902.....		\$ 1300.00	No check or stub. Cash \$1000.
"	10	"	No stub. Check payable to James Kinkaid.
"	14	" 200.00	not endorsed. Bk. Statement shows payment Ck. "The Commercial Bank, Caldwell, Idaho. Debit Frank Steunenberg,

Date.	Amount.	Remarks.
		Order of Kinkaid. Sent to John I. Wells, Basin (?)
" 16 "	50.00	"No stub. Check to self."
" 18 "		Bank statement shows payment of check.
" 20 "	1000.00	"The Commercial Bank, Caldwell, Idaho. Debit Frank Steunenberg." Cash \$1000 Bk. Statement.
" 22 "	95.00	Check to Bank of Ontario.
" 25 "		Bank statement shows payment of check. Stub Missing.
Dec. 2 "	6000.00	Check to A. K. Steunenberg, Cashier.
" 2 "		Bank statement shows A. K. S. Cash. Stub book and check missing.
" 2 "	16.00	Check to A. K. Steunenberg, Taxes. Same
" 10 "	22.80	Check to John Kinkaid.
" 13 "		Bank statement shows payment of check. Stub book and check missing.
" 15 "	19,000.00	"The Commercial Bank, Caldwell, Idaho, Debit, Frank Steunenberg." Cash \$19,000.00.
" 15 "		Bank statement shows payment of debit slip. No check or stub.
" 15 "	900.00	Check to A. K. S., Cashier.
" 16 "		Bank statement shows payment of check. No check or stub.
Jan 24, 1903	125.00	Check to Self, and indorsed, ACCT. B.
" 26 "		Bank statement shows payment of check. No stub.
" 27 "	800.00	Check to W. E. Borah.
" 28 "		Bank statement shows payment of check. Check indorsed. No stub or check.
Feb. 2 "	200.00	To W. E. Pierce & Co. Check. No check or stub.
Feb. 5 "	900.00	" " "
" 10 "	2,155.00	Check in envelope. See bank statement.
		Check to John Kinkaid.
		Bank statement shows payment of check. No stub. Check in envelope.
AGENT ACCOUNT.		
" 11 "	1,600.00	"To John Kinkaid. For Timber, Crooked River."
		Bank statement. Check in envelope.
" 11 "	2,400.00	"To John Kinkaid. For Timber, Crooked River."
" 12 "		Bank statement shows payment of check. Check in envelope.

Date.	Amount.	Remarks.
Feb. 11, 1903.....	\$ 6,000.00	"To First Natl. Bk. For John Kinkaid-Timber Crooked R."
" 12 "		Bank statement shows payment of check. Check in envelope.
" 12 "	6,000.00	"John Kinkaid. For Timber Crooked River."
" 13 "		Bank statement shows payment of check. Check in envelope.
" 12 "	6,000.00	"First Natl.—Kinkaid Acct. For Timber Crooked River."
		Bank statement shows payment of check. (Acct. Kinkaid.) Check in envelope.
" 13 "	4,000.00	"To First Natl. Bk. Acct. Kinkaid. For Timber Crooked River."
" 14 "		Bank statement shows payment of check. Check (Acct. Kinkaid.) Envelope.
" 14 "	20,155.00	"The Commercial Bank, Caldwell, Idaho."
		Debit, Frank Stunenberg. Cks. \$20,155.00" Envelope. No. stub or check. Transfer account.
" 14 "	4,000.00	"To First Natl. Bk. Acct. Kinkaid. For timber Crooked River."
" 17 "		Bank statement shows payment of check. Check (Acct. Kinkaid.) Envelope.
" 14 "	27.50	"To Idanha Hotel. For Board."
		Bank statement. Envelope.
" 17 "	1,900.00	"The Commercial Bank, Caldwell, Idaho. Debit, Frank Steunenberg. Agt. Checks. \$1900. "Envelope. Bk. Statement shows payment of Ck. for \$1900.
" 18 "	4,000.00	"To First Natl. Bank. For Kinkaid. Acct. Crooked River Timber."
" 20 "		Bank statement shows payment of check. Check "acct. Kinkaid." Envelope.
" 20 "	2,400.00	"To First Natl. BK. For Timber, Crooked R. Kinkaid.
" 20 "		Bank statement shows payment of check. Check (Acct. Kinkaid.) Envelope.
March, 14 "	4,000.00	"To First Natl. Acct. Kinkaid. For Crooked River." (No. amount.)
" 14 "		Check for same amount. "Acct. Kinkaid." Envelope.
" 16 "		Bank statement shows payment of check.

Date.		Amount.	Remarks.
" 14	"	25.25	"To Idanha. For Exp. Crooked R."
" 17	"		Bank statement shows payment of check. Check in envelope.
" 18	"	2,400.00	"To First Natl. Bk. For Crooked River. Acct. Kinkaid."
" 20	"		Bank statement shows payment of check. "Acct. Kinkaid." Envelope.
" 23	"	3,200.00	"To First Natl. Bk., Boise. For Kinkaid Acct. Crooked River."
" 25	"		Bank statement shows payment of check. Check "acct. Kinkaid." Envelope.
March, 25, 1903.		\$3,600.00	"To First Natl. Bk. For Kinkaid Acct. Crooked R. Bank statement shows payment of check. Check "Acct. Kinkaid." Envelope.
" 26	"		
" 25	"	1,200.00	"To First Natl. Bk. For Kinkaid, Acct. Basin. Koppas & Juans (?)."
" 26	"		Bank statement shows payment of check. Check in envelope. (Personal Acct. S.)
April, 5	"	4,000.00	"To John Kinkaid. For Com. Crooked River."
" 7	"		Bank statement shows payment of check. Check "Com." Envelope.
" 5	"	86.50	"To C. C. Stevenson. For Survyr. Acct. Barber L. Co."
" 10	"		Bank statement shows payment of check. Envelope.
" 7	"	600.00	"To W. E. Borah. For Atty. fee, Barber Lumber Co."
" 8	"		Bank statement shows payment of check. Envelope.
" 7	"	283.00	"John Kinkaid. For ½ Tohoma No. 3.
" 9	"		Bank statement shows payment of check. Envelope. (Personal acct.)
" 7	"	20.75	"To Idanha Hotel. For Board Acct. C. R."
" 9	"		Bank statement shows payment of check. Envelope.
" 15	"	153.82	"To W. H. Taylor. For Exp. Crooked River."
" 15	"		Bank statement shows payment of check. Check reads to Commercial Bk. "Acct. Taylor." Envelope.
" 16	"	100.00	"To A. L. S. Acct. Taylor. For Crooked River Advance."

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Date.		Amount.	Remarks.
"	16	"	Bank statement shows payment of check. Check "Adv. Acct. Taylor." Envelope.
"	23	" 1,240.00	"To John Kinkaid. For Crooked River title."
"	24	"	Bank statement shows payment of check. Check in envelope.
"	23	" 7,500.00	"To Perrault or Borah or Cobb. For Perrault Land."
May,	6	"	Bank statement shows payment of check, to Calvin Cobb." Check in envelope.
April,	23	" 17.50	"To Idanha for Board Acct. C. R."
"	25	"	Bank statement shows payment of check. Check in envelope.
"	28	" 1,600.00	"To John I. Wells. For 2 Titles on Crooked River."
"	30	"	Bank statement shows payment of check. Check in envelope.
May,	14	" 51.70	"To W. E. Borah. For Fees—Articles Coop & Ab."
"	16	"	Bank statement shows payment of check. Check in envelope.
May,	14, 1903.....	\$2,000.00	"To First Natl. For Kinkaid acct. Crooked River."
"	16	"	Bank statement shows payment of check. Check "Acct. Kinkaid," in envelope.
"	14	" 400.00	"To John Kinkaid. For Commission Crooked River. 2nd. payment."
"	16	"	Bank statement shows payment of check. Check in envelope.
June	5	" 500.00	"To John Kinkaid. For Com. Crooked River, 3rd payt.
"	8	"	Bank statement shows payment of check. Check in envelope.
"	5	" 55.25	"To Idanha. For Exp. Board etc. Crooked River."
"	9	"	Bank statement shows payment of check. Check in envelope.
"	9	" 310.85	"To N. H. Coffin, Cashier. For WM. Sweet."
			Bank statement shows payment of check. (Personal check S.) Check in envelope.
"	9	" 760.00	"To First Natl. Bk. For Kinkaid %, Crooked River Titles."
"	10	"	Bank statement shows payment of check. Check in envelope.
"	10	" 3.00	"To Miss Rubin. For typewriting acct. Crooked River titles."

Date.		Amount.	Remarks.
			Bank statement shows payment of check. Check.
"	11	12.50	"To Idanha. For Board—C Timber."
"	13		Bank statement shows payment of check. Check in envelope.
"	18	800.00	"To John Kinkaid. For Nickerson or Basin."
"	22		Bank statement shows payment of check. Check "Nickerson Basin" Envelope.
"	22	250.00	"To John Kinkaid, for Com. 5th payt. Crooked River."
"	24		Bank statement shows payment of check. Check in envelope.
"	23	800.00	"To John Kinkaid. For Basin title—Johnson."
"	24		Bank statement shows payment of check. Check "Basin Johnson" Envelope.
July,	1	400.00	"To John Kinkaid. For Com. Crooked River, 5th payment."
"	2		Bank statement shows payment of check. Check "Com." In envelope.
"	7	1,131.27	"To Frank Steunenberg personally, acct. funds adv. Crooked River etc."
"	21		Bank statement shows payment of check. Check in envelope.
"	7	27.00	"To C. B. Steunenberg. For Buchanan Acct. services Crooked River with Taylor."
Aug.	3		Bank statement shows payment of check. Check in envelope.
July,	7, 1903.....	\$200.00	"To John Kinkaid. For 6th payt. Commission Crooked River."
"	9		Bank statement shows payment of check. Check "6th payt. Com." Envelope.
"	18	1,600.00	"To John Kinkaid. For Titles Crooked R."
"	20		Bank statement shows payment of check." Check "Acct. C. R." Envelope.
"	18	1.60	"To Miss Bush. For Typewriting B. L. Co."
"	20		Bank statement shows payment of check. Check in envelope.
Aug.	3	54.55	"Idanha Acct. For Board Barber L. Co."
"	6		Bank statement shows payment of check. Check in envelope.

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Date.		Amount.	Remarks.
"	4	89.68	"To W. H. Redway for Household." No check. (Personal account.)
"	10	500.00	"To John Kinkaid for Com. Crooked River, 7th payt."
"	12		Bank statement shows payment of check. Check "7th Com." Envel- ope.
"	12	38.00	"To John Kinkaid. For Pat Downs Trip to C. R."
"	14		Bank statement shows payment of check. Check in envelope.
"	12	21.00	"To John Kinkaid. For John Wells trip to Basin acct. fire."
"	14		Bank statement shows payment of check. Check in envelope.
"	16	1,000.00	"To John Kinkaid for Bal. on Pop- pin mining claims."
"	18		Bank statement shows payment of check. Check in envelope.
"	16	3,200.00	"To John Kinkaid. For Crooked River Titles."
"	18		Bank statement shows payment of check. Check "C. R. Titles." Envelope.
"	30	800.00	"To John Kinkaid. For Thompson title Basin."
Sept.	1		Bank statement shows payment of check. Sept. 1st. Check in envel- ope. Indorsed by Kinkaid and Pritchard.
Aug.	30	30.00	"To Idanha. For Exp. Trip to Basin." Check in envelope.
"	7	1,600.00	"To John K. — Commission. For Crooked River. 7-1/2th payt."
"	10		Bank statement shows payment of check. Check "C. R." in envelope.
"	16	1,600.00	"To John Kinkaid. For titles C. R."
"	17		Bank statement shows payment of check. Check in envelope.
"	19	1,000.00	"To John Kinkaid 8th Com. C. R. Titles."
"	21		Bank statement shows payment of check. Check in envelope.
Sept.	23, 1903	\$6.00	"To D. S. Brown for Booze." Check missing. (Personal account.)
"	25	167.00	"To Geo. T. Young, Centerville. For Fighting Fire."
"	26		Bank statement shows payment of check. Check in envelope.

Date.		Amount.	Remarks.
"	30	250.00	"To John Kinkaid. For Exp. Pop-pin mine."
Oct.	2		Bank statement shows payment of check. Check in envelope.
"	1	8.00	"To Bogart & Mickay. For abstract & Map for Barber Lumber Co."
"	3		Bank statement shows payment of check. Check in envelope.
"	1	43.00	"To A. C. Thompson. For team hire for various trips to dam site, and one trip to Basin.
"	24		Bank statement shows payment of check. Check in envelope.
"	10	36.00	"To Pat Downs. For wages trip to C. R. to look up scrip lands."
"	13		Bank statement shows payment of check. Check in envelope.
"	10	25.00	"Idanha. For Exp. Barber Lumber Stamps, etc."
"	13		Bank statement shows payment of check. Check in envelope.
"	12	12.50	"To Wm. Gulleford. For Chapman saddle horse to C. R."
"	13		Bank statement shows payment of check. Check in envelope.
"	12	4,800.00	"To John Kinkaid. For Crooked River titles."
"	14		Bank statement shows payment of check. Check "C. R." Check in envelope.
"	12	800.00	"To John Kinkaid. For Basin titles Burchards." Check missing. Bank statement does not show that same was paid.
"	26	88.10	"To Idanha. For Board to Oct. 1, Acct. Barber Lumber Co."
"	29		Bank statement shows payment of check. Check in envelope.
"	26	30.00	"To Idanha Hotel. For Cash Adv. Acct. trip to Basin with Chapman."
"	29		Bank statement shows payment of check. Check in envelope.
Nov.	1	500.00	"To John Kinkaid. For 10th Com. C. R. Titles."
"	3		Bank statement shows payment of check. Check "Com. C. R." Check in envelope.
"	4	50.00	"To John Kinkaid. For cash acct. Titles, etc."

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Date.		Amount.	Remarks.
"	5	"	Bank statement shows payment of check. Check "Exp. C. R." Check in envelope.
Nov.	4, 1903.....	\$1,600.00	"To John Kinkaid. For Austin title C. R."
"	5	"	Bank statement shows payment of check. Check "C. R." Check in envelope.
"	6	" 2,000.00	"To John Kinkaid. For 5 titles (adv.) on C. R. at \$400 each."
"	7	"	Bank statement shows payment of Check. Check "C. R. 5 adv." Check in envelope.
"	6	" 400.00	"To John Kinkaid. For acct. Royce mines."
"	9	"	Bank statement shows payment of check. Check "Acct. Royce." Envelope.
"	12	" 7.00	"To J. A. Myers, Agt. For Fare to Idaho acct. C. R."
"	16	"	Bank statement shows payment of check. Check in envelope.
"	14	" 50.00	"To H. L. Fisher. For acct. Anderson-McKeeson."
"	17	"	Bank statement shows payment of check. Check in envelope. (Personal account.)
"	14	" 6.00	"To W. S. Galbraith. For Board acct. C. R. also sub. to Boise Co. News."
			Bank statement shows same paid Jan. 1904. Check missing.
"	23	" 300.00	"To John Kinkaid. For Com. 10th."
"	25	"	Bank statement shows payment of check. Check "Com." Check in envelope.
"	25	" 2,000.00	"To John Kinkaid. For bal. \$400. each on 5 titles at \$800 on Crooked river."
"	27	"	Bank statement shows payment of check. Check "C. R." Check in envelope.
"	25	" 600.00	"To W. E. Borah. For Atty. Sal. to Dec. 15, 1903. acct. Barber Lumber Co."
Dec.	1	"	Bank statement shows payment of check. Check in envelope.
"	5	" 800.00	"To John Kinkaid. For Woodburn title to claim in 6-4."

Date.		Amount.	Remarks.
" 7	"		Bank statement shows payment of check. Check "W-6-4." Check in envelope.
" 11	"	100.00	"To John Kinkaid. For Exp. Cases acct. B. L. Com."
" 14	"		Bank statement shows payment of check. Check in envelope.
Dec. 16	"	1,600.00	"To John Kinkaid. For Eaglesons Geo. G. Mary titles in 6-4."
" 17	"		Bank statement shows payment of check. Check "6-4." Check in envelope.
" 17	"	200.00	"To John Kinkaid. For Exp—for trial Com.(?)."
" 18	"		Bank statement shows payment of check.
" 17	"	500.00	"To John Kinkaid. For Assessment Atlanta 03 for F. S. 03 for K. Bal. Com."
" 21	"		Bank statement shows payment of check. Check "Atlanta & Com." Envelope.
Dec. 23, 1903.....		\$4,800.00	"To John Kinkaid. For 6 titles in 6-4. Ellis — Ehrmentroutt 2 F. Martin — Chas. Martin — Andrew Campbell."
" 24	"		Bank statement shows payment of check. Check in envelope.
" 29	"	3,200.00	"To John Kinkaid. For 4 titles, Willis A. Ross, Josie M. Ross, Andrew Campbell, Wm. R. Coleman."
" 30	"		Bank statement shows payment of check. Check "N. S." Check in envelope.
" 30	"	20.00	"To Idanha. For Exp. Cases B. L. Co."
Jan. 2, 1904.....			Bank statement shows payment of check. Check "cases" Check in envelope.
Dec. 31, 1903.....		380.00	"To John Kinkaid. For Comm & Exp."
Jan. 2, 1904.....			Bank statement shows payment of check. Check in envelope.
Dec. 31, 1903.....		500.00	"To Cashier First Natl. For Wm. Sweet on option."
Jan. 2, 1904.....			Bank statement shows payment of check. Check marked personal.
Jan. 1, 1904.....		120.00	"To Idanha. For Part Payt. titles."

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Date.		Amount.	Remarks.
" 4	"		Bank statement shows payment of check. Check in envelope.
" 2	"	25.00	"To Chas. Koelsch. For Exp. to Idaho Acct. taxes Barber Lumber Co."
" 5	"		Bank statement shows payment of check. Check in envelope.
" 2	"	3,080.00	"To John Kinkaid. For 4 titles—Davidson—Cleora M. Snow—Rice J. Harbaugh—Thos. Martin."
" 4	"		Bank statement shows payment of check. Check in envelope.
" 4	"	500.00	"To Self. For trip to Wn. Acct. B. L. Co."
			Bank statement does not show payment of check. Check missing.
" 4	"	250.00	"To G. D. Hoseley for Attory—Cage. Acct. B. L. Co."
" 7	"		Bank statement shows payment of check. Check.
" 20	"	500.00	"To Geo. F. Redway for Feb. 1st Payt. on Sweet option."
" 26	"		Bank statement shows payment of check. (Personal account.) Check in envelope.
Feb. 19	"	2,700.00	"To Geo. F. Redway acct. Wm. Sweet—final payt. option."
" 25	"		Bank statement shows payment of check. (Personal account) Check in envelope.
" 22	"	100.00	"To Arney—Dubois. For Exp. Acct. B. L. CO. Washington trip."
March, 2	"		Bank statement shows payment of check. (Personal to Fred T. Dubois) Check in envelope.
Feb. 25	"	200.00	"To M. P. Kinkaid. For Cash Adv. Acct. Exp. B. L. Co. at Washington."
March, 5	"		Bank statement shows payment of check. (personal account) Check in envelope.
March, 10, 1904.....		\$ 800.00	"To John Kinkaid. For title—Wheeler H. Martin. 6-4."
" 11	"		Bank statement shows payment of check. Check in envelope.
" 16	"	150.00	"To John Kinkaid—For Com—on titles C. R."
" 16	"		Bank statement shows payment of check. Check in envelope.

Date.		Amount.	Remarks.
"	28	100.00	"To Geo. Lake—For minutes, etc. on scrip land in 5-4 4-4."
"	30		Bank statement shows payment on check. Check to W. R. Lake. Check in envelope.
"	28	200.00	"To Pat Downs. For Posting notices scrip entries B. L. Co."
"	30		Bank statement shows payment of check. Check in envelope.
April,	1	211.25	"To Idanha for Board & Ldg. to date acct. B. L. CO."
"	4		Bank statement shows payment of check. Check in envelope.
"	1	4.50	"To L. M. Pritchard, For Typewriting, etc. B. L. CO."
"	2		Bank statement shows payment of check. Check in envelope.
"	13	1,100.00	"To John Kinkaid, For Eagleson (700) and Com. C. R. \$400."
"	13		Bank statement shows payment of check. Check in envelope.
"	16	700.00	"To John Kinkaid, For 13th Com. Crooked River."
"	18		Bank statement shows payment of check. Check "Com." Check in envelope.
"	19	15.50	"To A. T. Ingalls. For Survey on McMahn tract acct. B. L. Co."
"	22		Bank statement shows payment of check. Check in envelope.
"	19	100.00	"To W. R. Lake, For 2nd. Payt. acct. scripping land B. L. Co."
"	20		Bank statement shows payment of check. Check in envelope.
May,	4	100.00	"To W. R. Lake, For 3rd payt. on scripping."
"	7		Bank statement shows payment of check. Check in envelope.
"	5	102.00	"To Idanha. For board acct. B. L. Co."
"	7		Bank statement shows payment of check. Check in envelope.
"	5	10.00	To Idanha, For cash Adv. Stamps, etc."
"	17	25.00	Check to M. H. Kempner. No stub.
June,	10	400.00	"To John Kinkaid. For Commission R. R. B. L. Co."
"	14		Bank statement shows payment of check. Check "Com." (Check personal) Check in envelope.

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Date.	Amount.	Remarks.
June, 13, 1904.....	\$250.00	"To John Kinkaid. For part Payt. J. I. Wells title."
" 15 "		Bank statement shows payment of check. Check "on title." Check in envelope. (Check personal)
" 23 "	162.50	"To L. M. Pritchard For Bal. on John Wells title."
" 25 "		Bank statement shows payment of check. (Personal) Check in envelope.
July, 6 "	100.00	"To Frank Martin, For Atty. fee in part acct, contest cases in Land Office."
" 7 "		Bank statement shows payment of check. Check See envelope.
" 31 "	150.00	"To John Kinkaid acct. Wells Com."
Aug. 3 "		Bank statement shows payment of check. Check "Com." Check in envelope.
" 9 "	30.00	"To W. R. Lake, For Bal. on scrip 40's."
" 10 "		Bank statement shows payment of check. Check in envelope.
" 13 "	50.00	"To John Kinkaid for 1st payt. Stevenson claim. Bal. due 750."
" 17 "		Bank statement shows payment of check. Check "1st May Noble." Envelope.
" 17 "	750.00	"To John Kinkaid. For Stevenson claim C. R. Bal."
" 18 "		Bank statement shows payment of check. Check "Bal. S." Check in envelope.
" 31 "	150.00	"To John I. Wells. For Com. acct. Kinkaid C. R."
Sept. 2 "		Bank statement shows payment of check. Check in envelope.
Oct. 7 "	100.00	"To L. M. Pritchard. For Kinkaid Com. C. R."
" 10 "		Bank statement shows payment of check. Check "Com." Check in envelope.
" 19 "	25.00	"To L. M. Pritchard. For Kinkaid Com. C. R."
" 25 "		Bank statement shows payment of check. Check "Com. C. R." Check in envelope.
" 21 "	200.00	"To Geo. Redway, for Wm. Sweet, Bal. due."

Date.			Amount.	Remarks.
"	22	"	.....	Bank statement shows payment of check. Check in envelope.
Dec.	3	"	..... 25.00	"To L. M. Pritchard. No stub.
"	5	"	.....	Bank statement shows payment of check.
"	4	"	..... 100.00	"To Harry T. Wyman. No stub.
"	7	"	.....	Bank statement shows payment of check.
"	22	"	..... 30.00	To L. M. Pritchard. No stub. Bank statement does not show payment of check. Check in envelope.

At this time an adjournment was taken to Friday, March 5th, 1909, at ten o'clock, A. M.

Court met, pursuant to adjournment, at ten o'clock, A. M., Friday, March 5, 1909, the Examiner and counsel for the respective parties being present, at which time the following stipulation was entered into in open court:

It is stipulated by and between the attorneys for the respective parties that the ledger account of Frank Steunenberg, personally, and Frank Steunenberg, agent, with the Commercial Bank of Caldwell, is a true and correct statement of deposits made by, and charges made against, said Frank Steunenberg, personally and as agent, for the period therein covered.

It is further stipulated by and between the parties that the defendant, A. E. Palmer, drew drafts upon the defendants, James T. Barber and Sumner G. Moon, on the following dates and for the following amounts, which drafts were deposited by said Palmer with the Exchange National Bank of Spokane, Washington, on or about the date of each draft, to his credit, to wit:

April 14, 1902, draft for \$38,763.75;

April 14, 1902, draft for \$1,201.20;
June 20, 1902, draft for \$5,005.00;
June 25, 1902, draft for \$5,005.00;
June 27, 1902, draft for \$5,005.00;
June 30, 1902, draft for \$5,005.00;
July 7, 1902, draft for \$5,005.00;
July 23, 1902, draft for \$1,010.00;
August 4, 1902, draft for \$1,010.00;
August 4, 1902, draft for \$161.75.

And it is further stipulated that said A. E. Palmer deposited the proceeds of said drafts to his credit in the Exchange National Bank of Spokane, Washington, and, thereafter, from time to time, drew against said account the following checks, on the following dates, to the following persons, to wit:

April 10, 1902, check, to Frank Steunenberg, \$5,800.00;

April 11, 1902, check to Frank Steunenberg, \$1,200.00;

April 25, 1902, check to Frank Steunenberg, \$826.00;

May 2, 1902, check to Frank Steunenberg, \$250.00;

June 16, 1902, check to Frank Steunenberg, \$5,000.00;

June 25, 1902, check to Frank Steunenberg, \$5,000.00;

June 26, 1902, check to Frank Steunenberg, \$5,000.00;

June 30, 1902, check to Frank Steunenberg, \$5,000.00;

July 7, 1902, check to Frank Steunenberg, \$5,000.00;

July 21, 1902, check to Frank Steunenberg,
\$10,000.00;

August 15, 1902, check to Frank Steunenberg
\$5,000.00;

August, 31, 1902, check to Frank Steunenberg,
\$3,000.00.

(This check used to purchase New York exchange
by Palmer, and draft sent to Frank Steunenberg in
place of check.)

April 10, 1902, check to William Sweet,
\$32,925.00.

It is further stipulated that in addition said A. E.
Palmer paid from said funds realized from the pro-
ceeds of the drafts so drawn on Barber and Moon,
by issuing the following checks to the following per-
sons, the following amounts:

April 2, 1902, check to Pat Downs, \$17.00;

April 4, 1902, check to Dennis Thornton, \$65.75;

May 10, 1902, check to Dennis Thornton, \$16.10;

May 10, 1902, check to Dennis Thornton, \$25.00;

May 10, 1902, check to Dennis Thornton, \$25.00;

May 10, 1902, check to Dennis Thornton, \$44.75;

June 9, 1902, check to M. E. Lally, \$213.00;

June 14, 1902, check to Dennis Thornton, \$54.50;

June 14, 1902, check to Dennis Thornton, \$33.75;

June 14, 1902, check to C. B. Connors, \$25.00;

June 14, 1902, check to C. B. Connors, \$25.00;

June 14 1902, check to C. B. Connors, \$50.00;

June 16 1902, check to P. H. Downs, \$43.50;

July 3 1902, check to C. B. Connors, \$90.20;

July 14 1902, check to Dennis Thornton, \$40.50;

July 31 1902, check to William McMaster, \$86.50;

August 13 1902, check to Dennis Thornton, \$46.55.

It is stipulated that all of the above and foregoing checks were duly endorsed by the payees therein mentioned and all were paid and charged to the account of A. E. Palmer by said Exchange National Bank of Spokane, Washington.

The defendant reserves the right to complete the account of moneys drawn and disbursed by the said A. E. Palmer, the above and foregoing stipulations covering but a part of the moneys drawn by the said Palmer against the defendants Barber and Moon, and but a part of his disbursements on account thereof.

It is further stipulated by and between counsel for the respective parties, in open court, that the following is a true and correct statement of amounts deposited by the defendant John Kinkaid in the First National Bank of Idaho, and correctly shows the date of each such deposit during the period covered by this statement.

AMOUNTS DEPOSITED BY KINKAID IN THE FIRST NATIONAL BANK.

On page 1.

1901.

Nov.	6,	Deposit.....	\$1,250.00
"	12,	"	480.00
"	18,	"	100.00
Dec.	4,	"	37.25
"	4,	"	2,175.00
"	14,	"	200.00
"	20,	"	210.00

1902.

Jan.	2,	Deposit.....	\$ 120.00
"	27,	"	1,000.00
Feb.	10,	"	4,480.00
Mch.	3,	"	1,000.00
"	10,	"	4,000.00

On page 2.

1902.

		Amount brought forward.....	\$15,052.25
Mch.	19,	Deposit.....	3,000.00
"	28,	"	375.00
Apr.	11,	"	240.00
May	17,	"	110.00
June	18,	"	1,000.00
"	19,	"	200.00
July	2,	"	200.00
"	26,	"	100.00
Aug.	28,	"	750.00
Sept.	5,	"	250.00
Dec.	4,	"	500.00
"	16,	"	60.00

(O. K. McAfee)

On page 3.

1902.

		Amount brought Forward.....	\$21,837.25
Dec.	23,	Deposit.....	200.00
"	27,	"	750.00

1903.

Feb.	5,	"	\$ 2,500.00
"	9,	"	2,155.00
"	11,	"	6,000.00

vs. The Barber Lumber Company. 2863

"	11,	"	.....	2,400.00
"	11,	"	.....	1,600.00
"	12,	"	.....	6,000.00
"	12,	"	.....	6,000.00
"	13,	"	.....	420.00
"	13,	"	.....	4,000.00

On page 4.

1903.

	Amount brought Forward.....	\$53,862.25
Feb.	16, Deposit.....	63.31
"	16, ".....	4,000.00
"	17, ".....	4,000.00
"	18, ".....	4,000.00
"	20, ".....	2,400.00
"	20, ".....	100.00
"	21, ".....	2,500.00
Mch.	14, ".....	4,000.00
"	19, ".....	2,400.00

(O. K. McAfee)

1903.

On page 5.

	Amount brought Forward.....	\$77,325.56
Mch.	24, Deposit.....	3,200.00
"	25, ".....	4,800.00
Apr.	6, ".....	4,000.00
May	15, ".....	2,000.00
June	6, ".....	80.00
"	9, ".....	760.00
July	1, ".....	320.00
"	8, ".....	110.00
"	18, ".....	1,600.00

On Page 6.

1903.

		Amount brought Forward.....	\$94,195.56
Aug.	11,	Deposit.....	250.00
"	13,	"	38.00
"	17,	"	4,200.00
Sept.	6,	"	1,600.00
"	16,	"	1,600.00
"	19,	"	1,000.00
Oct.	1,	"	250.00
"	13,	"	5,600.00

On page 7,

1903.

		Amount brought Forward.....	\$108,733.56
Nov.	4,	Deposit.....	1,650.00
"	6,	"	2,000.00
"	7,	"	400.00

(O. K. McAfee)

1903.

Nov.	25,	Deposit.....	\$2,000.00
Dec.	1,	"	50.00
"	5,	"	800.00
"	16,	"	1,600.00
"	23,	"	4,800.00
"	29,	"	3,200.00

1904.

Jan.	2,	Deposit.....	\$3,080.00
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On Page 8.

1904.

		Amount brought Forward.....	\$128,313.56
Jan.	18,	Deposit.....	280.00
Feb.	8,	"	400.00

<i>vs. The Barber Lumber Company.</i>			2865
"	15,	"	5,600.00
"	23,	"	256.50
"	29,	"	1,050.00
Mch.	1,	"	800.00
"	2,	"	50.00
"	4,	"	800.00
Apr.	12,	"	1,250.00
"	28,	"	1,000.00
June	13,	"	400.00
Aug.	17,	"	450.00
(O. K. McAfee)			

On Page 9.

1904.

Amount Brought Forward.....			\$140,650.06
Sept.	28,	Deposit.....	500.00
Oct.	26,	"	210.00
Nov.	10,	"	480.00
Dec.	3,	"	25.00
"	21,	"	400.00
Dec. 31, Balance.....			\$83.33
(O. K. McAfee.)			

**[Testimony of Nelson Bottcher, on Behalf of the
Complainant.]**

NELSON BOTTCHEER, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(Mr. KEIGWIN.)

Q. Where do you live, Mr. Bottcher?

A. I live at Idaho City, Boise County, Idaho.

(Testimony of Nelson Bottcher.)

Q. How long have you lived there?

A. Pretty near twenty-eight years.

Q. What is your occupation?

A. Mining, milling, and assaying.

Q. Do you know one Arthur Anderson?

A. Yes, sir.

Q. How long have you known him?

A. About twenty years.

Q. Have you known him intimately?

A. Quite intimately.

Q. Do you remember that in the year 1901 you met Arthur Anderson directly or shortly after he had made final proof upon a timber land entry at this land office, and had some conversation with him about it?

A. Well, I don't know as I met him after final proof. I met him after he made his entry.

Q. Well, will you state when and where and under what circumstances you met and what he said in regard to his entry?

Mr. BUNDY.—We object to what he said as incompetent, irrelevant, and immaterial, and hearsay, calling for a conversation with a person not a party to this action, and a person through whom defendants do not claim title, and for the further reason that it is incompetent for the purpose of impeaching Arthur Anderson.

A. I met him here in Boise, when he was making the entry first. He said he had made an entry here.

Q. Was that all he said?

A. No, he said he had made a timber entry here,

(Testimony of Nelson Bottcher.)

and that I had better make one too. I told him I didn't think I wanted one. He also told me how he got his money to put up the first entry. I think it was four hundred or four hundred and something, I believe it was something over. He had got it from Mr. Wells to put up for the first cost. Isn't that it? Yes, and he said it wouldn't cost me anything; I could get my money just the same.

Q. Was that all he said at that time?

A. That was all he said at that time.

Q. Did you see him after he had made his final proof and had returned to Idaho City, or have any conversation with him about the entry?

A. Yes, I think I did. I don't recollect that there was much said about it at that time. Most of the talk had been done after he made his first entry. I was working with him for about three weeks, and we was talking a good deal about it. The way he told me, he made his first entry and the money was put up for him to pay, and he surrendered his certificate, or whatever he got, for that money to the parties; I believe he said Kinkaid, and when he got his patent he was to get the balance of the money; and later on he got his patent and then got his money.

Q. You were working with him at this time every day, you say? A. Yes.

Q. Were you living in the same house with him?

A. Yes, sir.

Q. Sleeping with him? A. Yes, sir.

Q. Did you talk much about this thing?

(Testimony of Nelson Bottcher.)

A. Well, we didn't talk much about anything else.

Q. Well, what what did he say about it?

A. I asked him about how it was, and he said if he had it to do over again, he wouldn't do it. I says, "Why"? "Well," he says, he had to swear to a whole lot of lies and if he was a young man or had it to do over again he wouldn't do it.

Q. Did he say this to you on one occasion?

A. No, he said that on different occasions.

Q. Did you say, Mr. Bottcher, that Anderson actually got the rest of his money when he got his patent, or that that was the arrangement, that he was to get the money when he got his patent?

A. Well, he was to get it, and I don't know as he told me out and out that he got it afterwards.

Q. You don't know whether he got a patent or not, do you?

A. I can't say as to that, but I thought he did.

Mr. BUNDY.—He told you he did, didn't he?

A. Yes.

Mr. KEIGWIN.—Did Anderson tell you he got a patent?

A. Yes, I think he did.

Cross-examination.

(By Mr. BUNDY.)

Q. This first talk you had with Anderson about it was the time he told you where he got his money to prove up, was it?

A. Yes, sir.

Q. And he told you that first time that he talked to you about it that he got the money from Wells?

A. I don't know as it was the first time, but then

(Testimony of Nelson Bottcher.)

he told me he got his money that way.

Q. You say it was before he made his final proof?

A. Yes.

Q. And you saw him down here in Boise?

A. I saw him in Boise, and I saw him up at Pioneer.

Q. The first talk, you said you saw him here in Boise, and that was the time he was down here and made his first entry? A. Yes.

Q. The time he filed on the land?

A. Yes, sir.

Q. And he told you he had filed that day, or just then? A. Yes.

Q. And he told you he had got the money then from Wells? A. Yes.

Q. That Wells had furnished him the money at the time he made filing? A. Yes.

Q. So that he could have money to prove up with?

A. Yes.

Q. And afterwards you knew about his making final proof? Did he tell you about that?

A. No, he didn't tell me about it, but I know when he went down to make it.

Q. And it was after that that he told you he surrendered the certificate to Kinkaid and got part of the money?

A. No, he told me that before he made his final proof.

Q. He had surrendered his certificate before he made final proof?

A. Yes, the receipt, or whatever you call it, that

(Testimony of Nelson Bottcher.)

you got for your money, the \$400.

Q. And he had surrendered that to Kinkaid before he made his final proof?

A. Yes.

Q. And then he told you he was to get the rest of his money when he got his patent? A. Yes.

Q. And he afterwards told you he had got his patent, and so you supposed he had got his money?

A. Yes.

Q. You remember distinctly about his telling you about getting the patent, do you, about the time it was?

A. No, I do not remember what time it was, but there were several of them, and he told me they had all got their patents. I couldn't say what time it was.

Q. Do you remember where you were in Boise at the time Mr. Anderson told you he had got the money from Wells to prove up, the first talk? A. Yes.

Q. Where were you?

A. We were in the Jap restaurant eating supper, him and I.

Q. Did you come down together? A. No.

Q. Were you working with him at that time?

A. Yes.

Q. Was that the time he came down to make filing?

A. That was the time he came down to make the first entry or filing.

Q. Did he have the money with him then?

A. The money for filing?

(Testimony of Nelson Bottcher.)

Q. The money he got from Wells?

A. No, I don't know that he did. He told me he went over to the Pacific Hotel and got it, and went right over to the land office and paid at that time. There was some trouble about the money coming, and he had to lay here a few days, and he couldn't file on the day he was supposed to file.

Q. But you are very certain that this conversation you had with Anderson was not at the time he made his final proof, but at the time of filing?

A. I am quite certain of that.

Q. And you knew of the time he came down for the purpose of filing?

A. I was here in Boise, and there was quite a bunch of them.

Q. Do you know whether that was the time he came to make his filing or his final proof?

A. That was the time he came to make his filing, first entry.

Q. At least that was the time you had the talk with him?

A. Yes, down here, and I had no talk of any consequence after he made his final proof.

Q. It was after he made his entry that he told you he had got the money from Wells?

A. Yes.

Q. And it was the same trip, within a day or two?

A. The same trip; I believe it was the same evening that he told me.

(Testimony of Nelson Bottcher.)

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You say there was quite a bunch of them down here with him? A. Yes.

Q. Who else was in the party?

A. Homer Granger and his wife, and there was a man by the name of Ed Hunter that was in the lot, too.

Q. Was that Abel Edward Hunter?

A. Yes, he was with them that time.

Q. Who else? Just think, Mr. Bottcher, how many others were there in that party?

A. This man William—he went by the name of Cooga Bill; that was a nickname he had—he drawed back when he got down here, he didn't file; he was with them at the time.

Q. Well, you say that Mr. Anderson was obliged to lie here for several days on this occasion?

A. Yes, I believe he laid here for several days.

Q. Did the other members of the party have to lie here the same way? A. Yes.

Q. Do you know whether or not they were in communication with John I. Wells at that time?

A. I think they were, because they were always together.

Q. Do you know whether or not—did Mr. Anderson say to you whether or not they were expecting to get their money from Wells?

Mr. BUNDY.—Same objection, calling for hearsay evidence.

A. He didn't say so, no, at that time, but he said

(Testimony of Nelson Bottcher.)

they were waiting for their money, the money hadn't come, and he didn't say he was to get it from John Wells exactly, but he told me afterwards that he got it through John Wells.

Q. Well, now, when was it that you were working with him for three weeks? Was it before or after this visit to Boise that you speak of?

A. This was after.

Q. That you were working with him?

A. Yes.

Q. How long after, do you know how long after?

A. This filing I think took place in September, or it may have been in the forepart of October, and we were working together in December; we worked through Christmas; we were doing assessment work.

Q. And that assessment work had to be completed before the 31st of December, did it not?

A. Well, it wasn't completed.

Q. Well, it ought to have been completed by the 31st of December? A. Yes.

Q. So that three weeks was the latter part of December and the early part of January?

A. Yes, sir.

Q. That was after his final proof?

A. No, that was his entry; he hadn't made final proof then.

Q. That was after the time you met him down here in Boise and stayed two or three days with him? A. Yes, it was after that.

(Testimony of Nelson Bottcher.)

Recross-examination.

(By Mr. BUNDY.)

Q. The time you speak of that he told you he had the money from Wells was the time of his entry in September, 1901?

A. Well, I won't say it was September.

Q. Well, at the time he made his entry?

A. Yes.

Q. He did make his entry September 24, 1901?

A. About that time; I couldn't say for certain.

Q. So that it would be on or about that time that he told you about getting this money?

A. Well, it was after that; he had made his entry, but we went to supper there together, and that was when he told me.

Q. It was the same day?

A. Yes, I think the same evening.

Q. So that he told you on the same day he made his original entry that he had got the money from Wells?

A. Yes.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Bottcher, during this period that you were working with Mr. Anderson and talking about this entry, did he express himself as being pleased and satisfied, or otherwise, with what he had done?

A. Quite the contrary to pleased; he felt sorry or remorseful about it.

Q. It was along about that time that you and Mr. C. R. Pencia wrote a letter to Senator Dubois about the taking up of timber land claims in that

(Testimony of Nelson Bottcher.)

region, was it not?

A. I think that was later; that was in the new year some time.

Q. And in that letter you mentioned the name of Mr. Anderson as having given you some information? A. Yes, sir.

Q. Was that with Mr. Anderson's knowledge or consent, or otherwise?

A. It was at his request.

Q. He asked you to write that letter?

A. He asked me to write it.

Q. You have known Mr. Anderson intimately enough to know something about his habits of drink, I suppose? A. Yes.

Q. Does he become very much intoxicated?

A. Well, he does at times, I guess, although I must say that I have never seen him under the influence so that he didn't know what he was about, and I have known him a long time.

Q. You mean that he has always appeared to you to be conscious of himself and what he was doing?

A. Yes, sir.

Q. Even when he was most intoxicated?

A. Yes, sir.

(Witness excused.)

At this time an adjournment was taken until 1:30 P. M., Friday, March 5, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the examiner and counsel for the respective parties being present. At this time Mr. William H. Taylor was called and sworn as a witness on behalf

(Testimony of L. G. Chapman.)

of the defendant, and examined and cross-examined, after which Mr. L. C. Chapman was recalled on behalf of complainant, and testified on direct examination as follows:

[Testimony of L. G. Chapman, on Behalf of the Complainant (Recalled).]

L. G. CHAPMAN, recalled as a witness on behalf of the complainant, testified as follows:

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Chapman, this book marked Plaintiff's Exhibit 143B, the 6-4 book, I understood you the other day to say that the estimates in that book were made by Mr. C. B. Connors some time in 1902?

A. I believe they were; those estimates were made before I had anything to do with it, and the reports were made to Eau Claire; these were sent out to us some time afterwards, in 1904 or 1905.

Q. And each page of this book contains a plat of the section and the township and range, and the opposite page to that the figures there indicate the estimates made on the timber on those lands?

A. Yes.

Q. Now, I find here in the first column of these estimates on the various pages, the estimates are made in three figures, 375, that means 375 what—thousand feet?

A. Thousand feet, board measure.

Q. And the same is true of the estimates made in the book marked Plaintiff's Exhibit 143A?

(Testimony of L. G. Chapman.)

A. Yes.

Q. The same is true of all estimates that have been furnished and that you have here?

A. Yes.

Q. And they reckon it by the thousand?

A. Yes.

Q. I show you what appears to be other estimates on 6-4, and ask you what that is?

A. That is simply a copy of the other estimates, in tabulated form.

Q. What other estimates?

A. The books we previously had here, those and probably others; this is simply a copy of the original estimate.

Q. Now, do you know in whose handwriting this exhibit is gotten up?

A. It is in the handwriting of Mr. S. G. Moon.

Q. And I notice in the column remarks—

A. The ink writing is Mr. Moon's; the pencil notations were made here.

Q. By whom?

A. They were made by myself.

Q. I notice in the column remarks that the word "Connors" appears. Is that in Mr. Moon's handwriting also? A. Yes.

Q. Then the lead pencil notations in the column remarks, which you said you put there, I will ask you what the letter S indicates?

A. S indicates that it was selected by the State of Idaho.

Q. And T & S indicates what?

(Testimony of L. G. Chapman.)

A. That they were entered under the Timber and Stone Act.

Q. Now, these papers which you hold in your hand and about which I have been making inquiry, marked Plaintiff's Exhibit 143D, I will ask you if all of the handwriting on that exhibit in ink is in the handwriting of Mr. Sumner G. Moon, one of the defendants?

Mr. BUNDY.—Gordon, if you are putting in this proof for the purpose of establishing that the Barber Lumber Company or its predecessors had people out here estimating timber that they didn't own, we will admit it; they estimated the whole country; there was lots of it that we don't own yet that we estimated. A. Yes.

Mr. GORDON.—Q. Do you know when this paper marked Exhibit 143D was made?

A. No, I don't.

Q. Do you know when you first received it, as near as you can remember?

A. It was some time after we established the office here, I couldn't tell you, probably during the year 1904 or 1905, the latter part of the year 1904 or during the year 1905.

Q. Do you know whether it was sent in just this form, or whether there was some correspondence sent along with it?

A. Well, I don't remember; I think they just gathered up all the estimates they had; I think we asked them for all the estimates they had, and they sent out all they had at once.

(Testimony of L. G. Chapman.)

Mr. GORDON.—We offer in evidence the paper marked Plaintiff's Exhibit No. 143D, which has been identified by the witness.

Q. I show you papers marked Plaintiff's Exhibit No. 143E, which appears to be estimates made on certain sections of township 7, range 4 east, and ask you in whose handwriting that exhibit is?

A. All that part written in ink is in the handwriting of Mr. Moon.

Q. And the letters in lead pencil are in your handwriting?

A. They all are except those marked in lead pencil with an S, on page 3; I don't know whose that is.

Q. And by whom were the estimates of the timber upon the lands indicated there made?

A. Made by Thornton and Connors.

Q. And those with the name Thornton opposite them were made by Thornton, and those with the name of Connors were made by Connors. Is that right? A. Yes.

Q. And the other letters S in the column remarks, in lead pencil, mean that the sections which they are opposite, or the quarter sections, are state lands, and the T. S. means timber and stone claims open at that time for entry?

A. T. S. is timber and stones; section 36 is marked school.

Mr. BUNDY.—The question is, whether or not he means to testify that what is marked T. & S. was timber and stone claims open for entry at that time?

A. I think they were timber and stone claims

(Testimony of L. G. Chapman.)

that were open to entry; they were evidently lands that we had notice of having been entered as timber and stone claims.

Mr. BUNDY.—Probably from the published advertisements. Do you know when those were made?

A. No.

Mr. GORDON.—We offer in evidence Plaintiff's Exhibit No. 143E, which has been identified by the witness Chapman.

Q. I show you papers marked Plaintiff's Exhibit 143F, 143G, and 143H, and ask you if they are in the handwriting of Mr. Sumner G. Moon, and whether the same statements you made with reference to what the other papers that you have identified indicate is true of these three exhibits?

A. They are just the same as the others.

Q. I show you paper marked Plaintiff's Exhibit 143I, and ask you in whose handwriting that paper is?

A. In the handwriting of Mr. Sumner G. Moon.

Q. I hand you paper marked Plaintiff's Exhibit No. 143J, and ask you in whose handwriting that paper is?

A. It is in the handwriting of Mr. Sumner G. Moon.

Mr. GORDON.—We offer in evidence papers marked Plaintiff's Exhibit No. 143I and 143J.

Q. I show you paper Marked Plaintiff's Exhibit No. 143K, and ask you whether you can tell in whose handwriting that paper is? A. No.

Q. I notice at the bottom of all of the pages ex-

(Testimony of L. G. Chapman.)

cept the first one is signed the name of Dennis Thornton, July, 1902. Do you know whether or not that is in Dennis Thornton's handwriting?

A. I presume it is, but I couldn't identify it. They are evidently not all in the same handwriting; some of them are signed Connors and some of them Thornton.

Q. I will ask you, Mr. Chapman, to look again at Plaintiff's Exhibit 143K, and ask you whether you can tell whether or not that paper is in Mr. Dennis Thornton's handwriting?

A. Well, I think it is, but I wouldn't want to say absolutely that it is, although I think it is.

Mr. GORDON.—We offer in evidence paper marked Plaintiff's Exhibit No. 143K.

Mr. BUNDY.—I object to all these estimates going in, and ask that those already in be stricken out as incompetent, irrelevant, and immaterial, and we specifically object to this last one as not having been properly identified, no proper foundation having been laid for its admission.

Mr. GORDON.—Q. Mr. Chapman, this paper that I have shown you and offered in evidence, Plaintiff's Exhibit 143K, that came from the files of your office, did it? A. Yes.

Mr. BUNDY.—All these things are produced, and why not put them all in?

Mr. GORDON.—I would like to know what they mean, and who they were made by; that is what I am trying to find out.

Mr. BUNDY.—They came from our files, and if

(Testimony of L. G. Chapman.)

signed by Dennis Thornton, the presumption would be that they are his.

Mr. GORDON.—I am willing to put it in and let it go that they are Dennis Thornton's.

Mr. BUNDY.—They purport to be signed by Dennis Thornton, and certainly if we don't show that they are not, it is all you want; it's up to us to show that they are not his, when we produce them, to show that they are not what they purport to be.

Mr. GORDON.—I show you paper marked Plaintiff's Exhibit No. 143L, and ask you in whose handwriting that paper is?

A. All of the ink portion is in the handwriting of Mr. Sumner G. Moon, and some of the pencil notations in his handwriting; others in mine, and others in the handwriting of someone I don't know.

Q. And that paper would indicate that the estimates were made by either Connors or Thornton. Is that correct?

A. There is some in blank that I don't know who made; the others would indicate that Connors or Thornton made them; all those after which the name of one or the other occurs I have no doubt were made by them.

Mr. GORDON.—We offer in evidence paper marked Plaintiff's Exhibit No. 143L, identified by Mr. Chapman.

Q. I show you paper marked Plaintiff's Exhibit 143N, Mr. Chapman, and ask you if you know whether that paper was written by Mr. C. B. Connors?

(Testimony of L. G. Chapman.)

A. I don't know; it is signed by Connors; I presume it was made by him.

Q. And it came from your files? A. Yes.

Mr. GORDON.—We offer in evidence paper identified by Mr. Chapman, marked Plaintiff's Exhibit No. 143N.

Q. I show you paper marked Plaintiff's Exhibit No. 143M, purporting to be a letter written by Dennis Thornton, in August, 1902, addressed to Mr. A. E. Palmer, Spokane, Washington, and ask you whether or not that is in the handwriting of Mr. Dennis Thornton? A. I think it is.

Mr. GORDON.—We offer in evidence paper identified by Mr. Chapman, marked Plaintiff's Exhibit No. 143M.

Q. Mr. Chapman, I show you paper marked Plaintiff's Exhibit No. 143-O, purporting to be estimates made by Dennis Thornton, in April, May, June and July, 1902, and ask you whether or not they are in the handwriting and signed by Dennis Thornton. A. I think they are.

Q. And they came from the files of your office, did they? A. Yes.

Mr. GORDON.—We offer in evidence Plaintiff's Exhibit No. 143-O, identified by the witness, Mr. Chapman.

Q. Mr. Chapman, you have in your hand paper marked Plaintiff's Exhibit No. 143P, have you?

A. Yes, sir.

Q. Will you explain what that paper is?

A. That is a full and exact transcript of all jour-

(Testimony of L. G. Chapman.)

nal and cash-book entries which constitute the account with Frank Steunenberg on the Boise books of the Barber Lumber Company.

Q. Now, I notice on the first page of that account, it is headed "1903," and then there are five entries, "paid your draft." Now, what do those five entries indicate?

A. All that part of the account was made up here from a transcript of the Eau Claire office books, and simply entered on ours.

Mr. BUNDY.—This doesn't show at all when it was entered on our books.

A. Yes, it does; it shows on the last page, on page 5, under the date December 19, an entry of a balance of \$6710.50, which is the ledger entry for all that precedes that; that is the first ledger entry on the Boise books.

Mr. GORDON.—That is December, 1904?

A. Yes.

Mr. BUNDY.—And all that precedes that is the journal entry showing how that balance of \$6710.50 was arrived at?

A. Yes.

Mr. GORDON.—And the information that you have by which you reached that conclusion was furnished you by the office of the Barber Lumber Company at Eau Claire, Wisconsin?

A. Yes.

Mr. BUNDY.—Now, I would like to have Mr. Chapman add there, so as to make the record right, state, Mr. Chapman, how that information was furnished you.

A. The first ledger entry under this account on

(Testimony of L. G. Chapman.)

the Boise books of the Barber Lumber Company is shown on page 5 of this statement, under date of December 19, 1904, showing a balance of \$6710.50. This amount was charged to the Boise office by the Eau Claire office, and notice of that charge was given in a letter dated December 19, 1904, addressed to C. F. Davis, Keokuk, Iowa, who had been employed as cashier and bookkeeper for the Boise office of the Barber Lumber Company, which letter is signed by Barber Lumber Company, F. H. L. Cotton.

Mr. GORDON.—Who was F. H. L. Cotton?

A. He was cashier of the Northwestern Lumber Company, and had charge of the Barber Lumber Company's books in the Eau Claire office. The items preceding the balance shown on page 5 of \$6710.50 are the amounts debit and credit by which this balance was obtained.

Mr. BUNDY.—Isn't it a true and correct copy and transcript of the journal entry from which the charge of the balance of \$6710.50 was made?

A. Yes.

Q. And furnished you by statement sent by Mr. Cotton to Mr. Davis in connection with the letter of December 19, 1904? A. Yes.

Q. So that, Mr. Chapman, the only charges which the Boise office has against Frank Steunenberg are the four items on the last page of this statement, under the year 1905. Is that correct?

A. Yes, those are the only charges against this account which originated here.

(Testimony of L. G. Chapman.)

Q. And there were no credits given to Steunenberg which originated at this office? A. No.

Q. So that the entire Steunenberg account, with the exception of four last items on page 5 of Exhibit 143P, is a mere transcript of the Eau Claire books?

A. Yes.

Mr. GORDON.—Q. Furnished you as you have heretofore stated? A. Yes.

Q. The only statements that you have, and the only record that you have in your books at the Boise office as to the money expended by the defendant A. E. Palmer in securing or obtaining timber lands for the Barber Lumber Company in Idaho are set out on the first page of this exhibit 143P, are they not?

A. Yes.

Q. And the only record you have in any of the books of the Barber Lumber Company, or that you have anywhere, of the money expended by Frank Steunenberg in acquiring lands for the Barber Lumber Company in Idaho are contained in this Exhibit 143P, are they not? A. Yes.

Q. Then the only books or records that you, as manager of the Barber Lumber Company, have, showing expenditures of money in acquiring timber lands for said company in the state of Idaho, prior to December 19, 1904, are contained in exhibit 143P?

A. This exhibit shows a record of all transactions for lands obtained through the agency of Frank Steunenberg. The record of transactions for the acquirement of other lands would be shown in the other exhibits submitted.

(Testimony of L. G. Chapman.)

Q. Then the only record that you have of the expenditures of money by Frank Steunenberg in the purchase or acquiring of lands in behalf of the Barber Lumber Company, at the office of the Barber Lumber Company at Boise, are contained in exhibit 143P? A. Yes.

Q. Mr. Chapman, I will ask you to look at paper entitled "Pine Land Account," marked Plaintiff's Exhibit No. 143Q, and ask you to tell us what is contained in that exhibit.

A. Exhibit 143Q is the full and correct statement of all entries on the books of the Barber Lumber Company in Boise for moneys paid for pine lands in the state of Idaho, the last page of this exhibit being a full transcript of all entries on the Barber Lumber Company's books under the title, "Northern Pacific Land Deal No. 1," and "Northern Pacific Land Deal No. 2," which are accounts covering a transaction in scrip for unsurveyed lands of the Northern Pacific Railway Company.

Q. You say, in the purchase of pine lands. Does that mean the purchase of all kinds of lands except the millsite, where you have your mill?

A. It includes everything except the millsite, and what we call the Holcomb ranch, which I don't think is in here; I think it is in a separate account; I don't think we charged it in our pine land account.

Mr. BUNDY.—I want to call your attention right there to one thing, Mr. Chapman. The first page, under date of December 19, 1904, in 143Q, contains a journal entry the total of which is charged in

(Testimony of L. G. Chapman.)

\$216,609.88. Now that journal entry contains some items of expense something different from the payment for land, does it not?

A. Well, it was the expense incurred in laying scrip, and was considered as a part of the purchase price.

Mr. GORDON.—Q. Now, Mr. Chapman, I will ask you to look at Exhibit 143R, entitled, "Land Expense Account," and explain that.

A. I think there is one thing that ought to be in there that I didn't state in answer to your question about Q, that is, this account is of December 31, 1908; the accounts were made up to the first of January, 1909.

Q. (Last question read by stenographer.) What that paper represents?

A. Exhibit 143R is a full and complete statement of all entries on the books of the Barber Lumber Company at Boise, charged to the land expense account, as well as the credits to this account, in which the amount has been charged off to profit and loss, to which account we charge all the incidental expenses of cruising, recording of deeds, fighting fires, and so forth.

Q. What does the paper marked Plaintiff's Exhibit No. 143S, entitled "Attorney's Fee Account," represent Mr. Chapman?

A. Plaintiff's Exhibit No. 143S is a full statement, as of December 31, 1908, of all moneys paid by the Boise office of the Barber Lumber Company for attorneys' fees and expenses connected therewith,

(Testimony of L. G. Chapman.)

which would include court fees, or anything of that kind.

Q. I notice the first item on this attorneys' fee account, in the exhibit just referred to, September 29, 1904, \$300.00. That is taken from the Steunenberg account, is it?

A. No, that was a payment made by this office. The items appearing under December 19, which are followed by an earlier date, are those taken from statements or from transcripts from the Eau Claire office books.

Q. Now this item that you have just referred to, December 19, 1904, I see an item dated December 14th, "paid expenses in trial of cases \$680.00." Do you know what that item means?

A. I do not.

Q. That, I assume, from what has already been testified to, is taken from the Steunenberg account.

A. Well, I don't know; it came in a transcript from the Eau Claire office, and possibly from the Steunenberg account.

Q. That isn't included then in what is called the Frank Steunenberg account here, which is referred to in this exhibit 143P.

A. If this account came from him it would be in the credits of the Frank Steunenberg account, which is known as exhibit 143P.

Q. Then I notice the next item, January 2, 1904, and that is marked "paid expenses in trial cases \$20.00." Does that mean that that was paid by or through the office of the Barber Lumber Company at

(Testimony of L. G. Chapman.)

Boise, or is that also brought forward from the Steunenberg account?

A. Well, it is brought forward from some account that originated at the Eau Claire office; I think I can explain it to you in this way, that where no check number appears the payment was not made from this office.

Q. You do not know what that \$20 charge was for?

A. No, I do not.

Q. And the next item, June 1, "Paid William E. Borah salary as attorney to July 1, 1904, \$600.00." That was paid through the other office, or through Steunenberg?

A. That was paid through the other office.

Q. And July 1, 1904, "Paid G. M. Parson, attorney before the land office, \$400.00." Do you know anything of that item, other than that it is in the books that you have under your control?

A. That is all.

Q. Now, item December 17, 1904, check 560, Borah salary, \$900.00. That was paid through your office?

A. That was paid through this office.

Mr. BUNDY.—And all subsequent items.

Mr. GORDON.—The next item is January 9, 1905, check 760, C. W. Moore for M. G. Cage, balance on 1904, \$250.00. That was an attorney fee, was it?

A. That was an attorney fee.

Q. And what did Mr. C. W. Moore have to do with that?

A. Mr. Cage owed him \$250, and he had an order for it, or we were requested by Mr. Cage to pay

(Testimony of L. G. Chapman.)

it to Mr. Moore, or something of that kind.

Q. Mr. Moore is a banker?

A. Mr. Moore is a banker, yes.

Q. And do you know, did you employ Mr. Cage?

A. No, I did not.

Q. Did the Barber Lumber Company owe Mr. Cage anything?

A. He was retained by representatives of the Barber Lumber Company.

Q. For what? A. As an attorney.

Q. To do what?

A. Well, I never could very well find out what.

Q. Do you know who retained him?

A. I think he was retained by Hoseley.

Q. Mr. G. D. Hoseley?

A. Mr. G. D. Hoseley.

Q. Do you know whether it was in connection with some cases before the land office?

A. I don't think so.

Q. Did you ever have any talk with Mr. Cage as to his employment or the amount that he was to be paid?

A. I think not; when I returned I was told that we still owed him \$250 on his retainer, and that was paid to Mr. Moore.

Q. Did the company ever have any litigation outside of the land office that Mr. Cage represented them in? A. Not that I know of.

Mr. BUNDY.—Nor very many in the land office that he represented them in?

A. Not that I know of.

(Testimony of L. G. Chapman.)

Mr. GORDON.—Q. Did you pay him on Mr. Hoseley's representation that he had employed him?

A. Yes, sir.

Q. Now I find another item here, January 27, Hoseley's check, January 6, 1904, to M. G. Cage, \$250.00. Do you know what that means?

A. That was the first half of his retainer, \$500, which they had paid him for a year.

Q. Hoseley retained him for a year?

A. Hoseley retained him for a year and paid him \$250, and we afterwards paid him the second \$250, to Mr. Moore.

Q. Was Mr. Hoseley authorized to employ counsel?

A. There was some question about that at the time.

Q. Mr. Hoseley was advised when he came here that if he needed an attorney that William E. Borah was the attorney for the Barber Lumber Company, and that he should go to him, was he not?

A. I don't know.

Q. And you don't know what litigation it was respecting that Cage was employed, do you?

A. No.

Q. Now, the next item on this exhibit, July 26, 1905, check 896, W. E. Borah, \$50.00. Do you know what that expense was for?

A. No, I do not.

Q. Did Mr. Borah render a bill or write you a letter about that?

A. I don't recollect; I don't remember what that

(Testimony of L. G. Chapman.)

was for.

Q. The next item, September 26, 1905, check No. 2440, William E. Borah, on account, \$75.00. Do you remember why that was given?

A. I don't remember why that was given, but you will notice by the check following that it was made a part of his retainer for the year June 12, 1905, to June 12, 1906.

Q. It surely couldn't be that he was hard up and you made him an advance of \$75.

A. I don't remember how that came in.

Q. You don't remember anything about either of those items? A. I don't remember a thing.

Q. And there is nothing on your books or any of your records or check stubs that will show anything?

A. The check stubs are right here; we can look them up, but I don't know whether they would show anything.

Q. I find there, December 31, 1906, Moody, attorney's fee, \$244.80. Do you know what that was for?

A. Yes, he represented us in the water suits that were being carried on at that time.

Q. Now, Mr. Chapman, there is an item there that was noted in the books of the Barber Lumber Company at Boise, July 1, 1904, and the date opposite, November 12, 1902, F. Steunenbergh, trip to Tacoma Washington, account interview with Senator Foster, \$50. Do you know anything about that item? A. No, I don't.

Q. And the next item, January 31, 1903, paid A. V. Campbell, special agent, \$200. Do you know any-

(Testimony of L. G. Chapman.)

thing about that? A. No, I don't.

Q. Mr. Chapman, I notice an item here, October 8, 1907, Silas Moody, \$125.00, A. A. Fraser, \$200, Lyttleton Price, \$263.20; that is added up \$588.20. What was that?

A. The Silas Moody payment was for his services in the appeal of the water cases; the payment to Mr. Fraser and Mr. Lyttleton Price was in the Ex parte Chapman cases.

Q. They were in the contempt proceedings, and the habeas corpus proceeding subsequently?

A. Yes.

Q. And they were paid by the Barber Lumber Company, were they? A. Yes.

Q. Now, I notice the next item, October 1, 1907, following October 8th; is that correct or not?

A. I expect that is a clerical error. I expect that should have been some date between the 10th and the 18th.

Q. I understood you to say that what had been paid by the Barber Lumber Company through your office there is a number to the check.

A. I thought it showed in all cases, but apparently there are some there that it doesn't.

Q. There is a check 9808, A. L. Richardson, Clerk of the Court, fee in appeal L. G. Chapman, \$17.80. Was that paid to the clerk here for making up the record in the contempt proceeding?

A. Yes, it was in that case.

Q. Now, I find on the same date, check 9815, Mr. Bundy, \$600. What was that for?

(Testimony of L. G. Chapman.)

A. Paid Mr. Bundy on account.

Q. Of what?

A. His legal services to the Barber Lumber Company.

Q. Now were the services of Mr. Bundy rendered here at Boise?

A. No, I don't think they were, not until this trip.

Q. Was Mr. Bundy at Boise at that time?

A. Yes.

Q. On business for the Barber Lumber Company?

A. Well, I presume so; I think he was here on the business of Barber and Moon.

Q. Was that at the time of the Borah trial?

A. Yes.

Q. Now, I notice on the same date—I will ask you, was that the time that Mr. Bundy appeared for you personally at the Borah trial?

A. I don't think that Mr. Bundy appeared for me personally; Mr. Bundy wasn't our attorney in that case, in the contempt case, if that is what you want. Mr. Fraser and Mr. Price were our attorneys in the contempt case.

Mr. BUNDY.—He is speaking about the Borah trial. You remember that I got up here and made the objection for you? A. Oh, yes.

Mr. GORDON.—Q. Now check No. 9881, to Mr. Hawley, for \$250.00, October 1, 1907. What was that for?

A. That, I believe, was on account of retainer in

(Testimony of L. G. Chapman.)

the—I suppose in both the Barber-Moon and the Barber Lumber Company.

Mr. BUNDY.—Let me refresh your recollection about that. Those three checks were given to me, weren't they?

A. I couldn't tell; I presume so.

Mr. BUNDY.—Well, they were; I was out here for Barber and Moon and the Barber Lumber Company; I was out here in the Borah trial, and this civil action that we are now trying was pending, and at that time I retained Hawley and Fraser and Mr. Chapman gave me checks for them, and I paid them, and I retained them, and he gave me a check for this; he never paid me a check for Barber and Moon.

The WITNESS.—I think the only mistake was that we didn't charge it to the Eau Claire office.

Mr. BUNDY.—Don't that refresh your recollection about the Hawley and Fraser checks?

A. Yes.

Mr. BUNDY.—I took the checks. I am the senior counsel in this case, and, as such, I retained these other fellows, and Mr. Chapman gave me a check, and I paid them in this very case we are trying now.

Mr. GORDON.—Now, then, this check 9881, to Mr. Hawley for \$250.00 was a check that was drawn to Mr. Hawley at the suggestion of Mr. Bundy, as a retainer of Mr. Hawley in the civil suit or the criminal suit?

Mr. BUNDY.—Well, the civil suit was the one we talked about; it was in the civil suit, I should say.

(Testimony of L. G. Chapman.)

Mr. GORDON.—And the check No. 9882, to A. A. Fraser, \$500, was drawn under the same circumstances.

The WITNESS.—Yes, sir.

Q. And was Mr. Fraser employed in the criminal and civil suit?

Mr. BUNDY.—Just employed; I retained them and left this civil suit with them at that time; I was looking after the criminal suit back there, and they was looking after the civil suit; those are checks that I paid out.

Mr. GORDON.—Now I notice an item here, December 21, 1907, check No. 10479, Cavanah & Blake, for W. E. Borah, \$700. Will you state what that was for?

A. That was the final settlement with Mr. Borah when he went out of practice.

Q. And were Cavanah & Blake connected with him in any way?

A. They succeeded to his office.

Q. Were they connected with him in any way before that?

A. Mr. Blake was, but I think not Mr. Cavanah; Mr. Blake was in his office, but I don't know what their relations were.

Q. That is John J. Blake? A. Yes.

Q. Now I notice an item of the same date, check No. 10590, Brannin & Heald, account court stenography, \$50.00. What was that for?

Mr. BUNDY.—Those were my expenditures too, copy of the Borah transcript in the Borah trial.

(Testimony of L. G. Chapman.)

Mr. GORDON.—And the item, check 10595, for the same thing? A. Yes.

Mr. BUNDY.—Those three checks strung along because there was a disagreement on the price.

Mr. GORDON.—I notice an item here on the second page, attorney's fees, February 1, 1908, A. A. Fraser, \$100.00. Was that for services in the suit now pending? A. On account, yes.

Q. And item March 3, 1903, D. T. Miller, balance \$79.80. What does that mean?

A. Well, it was some expense connected with the removal proceedings.

Mr. BUNDY.—And depositions taken before Miller.

Mr. GORDON.—That has got "bal" after it; I assume it means "balance." Was anything paid Miller before that?

A. Why, I think not; it is barely possible that Mr. Fraser might have paid him something, or Mr. Bundy.

Mr. BUNDY.—I paid him some money.

Mr. GORDON.—March 18, 1908, A. A. Fraser, certified copies pleas Martin case, \$20.00. Do you know what that was for, who ordered them?

A. Well, I don't know any further—

Mr. BUNDY.—I asked Fraser to get it, and I suppose he got it from the clerk.

Mr. GORDON.—March 27, 1908, check 3150, Silas Moody, \$150. What was that for, Mr. Chapman?

A. That I think was the final settlement with Mr. Moody in the water right cases.

(Testimony of L. G. Chapman.)

Mr. BUNDY.—I want to object to this kind of thing because it takes too long.

Mr. GORDON.—This item here, April 11, 1908, check 4091, Cavanah & Blake, \$100. Do you know what that was for? A. I have forgotten.

Q. And the check May 26, 1908, number 5159, Borah, Cavanah & Blake, fee Homer Kelley case, \$250.

A. That was their fee in a case involving title to a part of the mill site, and I think likely the \$100 was also a part of that, although I am not sure.

Q. And the item October 13, 1908, check 10064, Cavanah & Blake, retainer. What was that for?

A. That was their retainer for the year ending with the present calendar year.

Q. In other words, they succeeded Senator Borah as record counsel for the Barber Lumber Company?

A. Yes.

Q. Mr. Chapman, look at exhibit 143T, entitled "Mill property account," and state what that account covers?

A. That is a full statement of the cost of the millsite, and was all taken from statements forwarded from the Eau Claire office to the Boise office.

Q. And you know nothing about it other than you started your books by entries containing these matters furnished you by the Eau Claire office.

A. That is all.

Q. Now as to Plaintiff's Exhibit No. 143U, what is that?

A. That is a transcript of the journal entry which

(Testimony of L. G. Chapman.)

was made from the statement transmitted from the Eau Claire to the Boise office, at the time of opening of the books at Boise.

Q. Now look at paper marked Plaintiff's Exhibit No. 143V, entitled "Boise office debtor to home office expense account," and state what that exhibit is a showing of?

A. Plaintiff's Exhibit 143V is a transcript of the journal entry made at the opening of the Boise books, on statement furnished from the Eau Claire office, as a charge to the expense account.

Q. And Exhibit No. 143W.

A. 143W is a transcript of the journal entries made at the time of opening the Boise books, taken from a statement furnished by the Eau Claire office, for charge to tax account.

(Witness excused.)

At this time adjournment was taken until 10:00 A. M., Saturday, March 6th, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Charles F. Koelsch, on Behalf of the Complainant.]

CHARLES F. KOELSCH, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are an attorney at law and practice at Boise, Idaho? A. Yes, sir.

(Testimony of Charles F. Koelsch.)

Q. And have, for a number of years past?

A. Yes, sir.

Q. Did you know Frank Steunenberg in his lifetime? A. I did.

Q. Did you ever pay any taxes at the request of Frank Steunenberg? A. I did.

Q. Now state the occasion and the reason for your paying those taxes?

A. Well, the occasion, he came to my office the latter part of December, 1903, and asked me—I suppose there is no objection to my detailing all the conversation—he said to me, he had some taxes to pay at Idaho City, but that the weather was cold, and he wondered whether I wouldn't go up there for a consideration, for a fee, and I said that I should be pleased to do so, and I think I left on the 29th of December. In the same conversation he also told me that if I saw Mr. Kehl, who was then manager of the Payette Lumber Company, I could undoubtedly also make arrangements with him for paying taxes on lands owned by the Payette Lumber Company up there, and I did so, and was retained by Mr. Kehl. I think it was the 29th of December that I left for Idaho City and paid them.

Q. And how did he indicate to you what taxes he desired you to pay?

A. He gave me a list of names, rather a voluminous list, and told me to look them up on the assessor's books and pay those.

Q. And do you know what the amount of those taxes aggregated?

(Testimony of Charles F. Koelsch.)

A. Why, my recollection isn't very clear on that, but I think it was something over \$3000.

Q. And you then went to Idaho City?

A. Yes, sir.

Q. And did you know the assessor there?

A. I wasn't well acquainted with him; I just knew him, that was all.

Q. And who was the assessor at that time?

A. M. Zapp.

Q. And did you and Mr. Zapp go over the records of this list? A. We did.

Q. I mean, you went over the records of the assessor's office and looked up the taxes of the persons whose names were indicated on the list that Governor Steunenberg had given you? A. Yes, sir.

Q. And you paid the taxes? A. Yes, sir.

Q. And did you take receipts for them?

A. I took the usual tax receipt issued by the assessor's office.

Q. And did you take them in Governor Steunenberg's name, or in the name of the person to whom the taxes were assessed?

A. I think I took them in the name of the persons against whom the taxes were assessed.

Q. Were you told to take receipts that way by Governor Steunenberg?

A. Why, he told me to pay those taxes and take the receipts; I think those were the instructions.

Mr. BUNDY.—That's the only way you could get a receipt, for the man that it was assessed against.

Mr. GORDON.—Now did Governor Steunenberg

(Testimony of Charles F. Koelsch.)

give you a check to pay those taxes with, or was there some arrangement made by which you could pay them yourself?

A. There was an arrangement made. He did not give me a check; and the arrangement was this: I think both of us went to the First National Bank—I was officing up stairs in that bank at that time—I think both of us went down to the bank—I wouldn't be positive on that score though; it may be that he told me that he had made the arrangements, but my best recollection is that he and I went down there, and the bank then told me, whatever it was that was agreed upon—I am not sure what that was or whether it was a check of my own, or a check of Steunenbergs by Charles F. Koelsch, I am not sure, but the bank told me that the paper,—whatever it was that we had agreed upon—would be honored by them.

Q. That was before you went to Idaho City?

A. That was before I went to Idaho City. I will state also that I have since inquired at the bank as to what that paper was that they issued, but they told me they found no record of it; and I went up to Idaho City, and after the amount had been aggregated I issued this paper, whatever it was, check or draft, and in order to satisfy the assessor that the paper was good and would be honored, I told him to call up by telephone the First National Bank in this city, and he did so; at any rate, he said it was all right; I don't think I went with him to the telephone; and the matter was concluded in that way.

(Testimony of Charles F. Koelsch.)

Q. And you didn't have any deposit of your own at the First National Bank at that time?

A. No, sir, never did.

Q. And whatever the paper was that you signed, I understood you to say was either your individual check, drawn on the First National Bank, or a check drawn by you on the First National Bank, which you signed Frank Steunenberg, per K, or a draft that you drew on Steunenberg for that amount?

A. Yes, sir, it was one or the other. As I said before, the matter has slipped by memory, but I have studied it over a great deal since I was asked those questions before the Grand Jury, and while I do not state it as a fact, I have a sort of hazy recollection that it was a check signed Frank Steunenberg, by Charles F. Koelsch, agent.

Q. And Frank Steunenberg paid you a fee for that, did he? A. Yes, sir.

Q. How much?

A. I think he paid me \$25 and half of my expenses, and the Payette Lumber Company paid me the same; that is my best recollection.

Q. And when you returned you took the receipts and gave them to Governor Steunenberg?

A. Yes, sir.

Mr. BUNDY.—No cross-examination.

(Witness excused.)

[Testimony of C. R. Poncia, on Behalf of the Complainant.]

C. R. PONCIA, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. Where do you live, Mr. Poncia?

A. Boise Basin, Boise County, supposed to be Boise Basin.

Q. At what town do you live?

A. Pioneer.

Q. Pioneerville?

A. You can call it—at one time it had two names; it was Pioneer City the first time, and it is Pioneer now.

Q. What is your occupation up there?

A. Oh, mining generally.

Q. Do you also run a hotel? A. Yes, sir.

Q. And the postoffice? A. Yes, sir.

Q. And a general store?

A. General merchandise store.

Q. And were you so occupied in the years 1901 and 1902? A. Yes, sir.

Q. Do you know Arthur Anderson, who lives in the neighborhood of Pioneerville? A. Yes, sir.

Q. How long have you known him?

A. I have known him anyway for the last thirty years; he has been in the same place.

Q. Do you remember the time when Arthur Anderson made an entry of land at this land office in

(Testimony of C. R. Poncia.)

Mr. BUNDY.—Same objection.

Mr. KEIGWIN.—Did Mr. Anderson say that the reason he wouldn't do that again was because he had to lie straight through?

Mr. BUNDY.—The same objection, for the same reasons, and for the further reason that it is leading and suggestive.

A. He did; the first time he was here in the court I guess he was on the stand; he went on the stand; the first time he was on one side and the second time on the other side; that is all I got to say.

Mr. KEIGWIN.—Mr. Poncia, do you remember Mr. Louis L. Sharp, a special agent of the general land office? A. I do.

Q. He stopped at your house for a day or two at one time, did he not? A. Yes, sir.

Q. Do you remember that during his stay at your house he had an interview with Arthur Anderson and took an affidavit from Mr. Anderson?

A. I do.

Q. Were you present that evening?

A. No, sir.

Q. Where were you?

A. There was two departments, like here and there (pointing), and I was in the other department.

Q. You were in the house?

A. I was in the building.

Q. And attending to your business?

A. Yes, sir.

Q. And you saw Mr. Anderson and Mr. Sharp from time to time, I suppose.

(Testimony of C. R. Poncia.)

A. I saw him pretty near all summer off and on.

Q. You know they were there?

A. Yes.

Q. Do you know at what time in the evening that affidavit was taken?

A. Between eight to ten o'clock.

Q. Was Mr. Sharp drinking that night?

A. No, sir.

Q. Do you know whether he drank at all?

A. I don't think he ever touched it.

Q. Do you dispense the liquor that is sold there?

A. I did.

Q. Did you sell him any liquor that night?

A. No, sir.

Q. Did Anderson drink any that night?

A. Yes, sir.

Q. Do you know how much?

A. That's pretty hard to tell when there is a crowd of people around.

Q. Was he drunk? A. No.

Q. Was he so far affected by liquor that he didn't know what he was doing?

A. I know he went home; he had to walk pretty near a mile and a half.

Q. Do you remember what time he went home?

A. He must have went home something in the neighborhood of eleven o'clock, something along there.

Q. Do you know what time you closed?

A. No, I don't know; sometimes it is open all night; sometimes we close up at eight o'clock.

(Testimony of C. R. Poncia.)

Q. Do you remember what time you closed that night? A. No, I couldn't say.

Q. Do you remember whether Mrs. Poncia and Miss Clowder were gotten out of bed and brought down to sign the affidavit?

A. I don't suppose they got out of bed at all.

Q. Had they gone to bed before the affidavit was signed? A. No, they was not in bed.

Q. I show you here, Mr. Poncia, a letter dated January 24, 1902, addressed to Hon. Fred T. Dubois. Do you know that letter? A. Yes, sir.

Q. Is that your writing? A. No.

Q. Who wrote that letter?

A. Mr. Bottcher.

Q. Did you sign it?

A. I guess I did; I think that is my name there.

Q. Did you sign that?

A. No, I guess not; Nels Bottcher put my name there.

Q. Did he put it there by your authority?

A. Yes, sir.

Q. Now, in this letter, Mr. Poncia, you state a number of facts in regard to entries under the timber and stone land law in your neighborhood and to certain fraudulent practices employed in securing those entries, and you say, "I am indebted for this information to Mr. Arthur Anderson, the first man on the list." Did you get this information from Mr. Anderson?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial, the letter itself not being

(Testimony of C. R. Poncia.)

offered, and not being competent if offered, and asking for the rankest kind of hearsay testimony.

A. Yes, that is the way; we talked together, and a part of that letter belonged to Arthur Anderson, and a part of it belonged to everybody; he wanted to know how the land stood.

Mr. BUNDY.—Who wanted to know?

A. Arthur Anderson, and he wanted to find out.

Mr. KEIGWIN.—Do you mean that you wrote this letter at Mr. Anderson's request?

A. Yes, at his request, and—

Mr. KEIGWIN.—We offer the letter in evidence. (Marked Plaintiff's Exhibit No. 144A.)

Q. Mr. Poncia, were the statements that you made in this letter true and correct, as you understood, at that time?

Mr. BUNDY.—I object to that as incompetent, irrelevant and immaterial.

A. I suppose they would be true just as well as the day you was born.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Poncia, how many drinks had you had before you went on the witness-stand this morning?

A. I had two drinks, sir.

Q. Well, you are not very full then?

A. No.

Q. Was Arthur Anderson fuller than you are now at the time he was there with Sharp?

A. I don't know; one man can stand a barrel and another one can't stand a glass.

(Testimony of C. R. Poncia.)

Q. I know, but was Arthur Anderson any drunker at the time he was with Sharp than you are now?

A. About the same; he had a drink or so, like all Basin men did.

Q. Your judgment would be that you and Arthur Anderson are about the same?

A. Yes, sir.

Q. You kept a saloon at that time?

A. Yes.

Q. Was you as drunk the night Sharp was there as you are now?

A. I don't think I was; I don't think I had a drink that day; sometimes I don't drink at all.

Q. Did you bring the drinks to Anderson?

A. No, sir.

Q. Who did?

A. He came to the counter.

Q. Who served them to him?

A. Sometimes I did, and sometimes somebody else.

Q. Were you in the saloon all evening?

A. Pretty near, yes.

Q. But you wasn't there at the time the affidavit was taken?

A. No, that was in the sitting-room.

Q. Well, this letter that you and somebody else wrote to Senator Dubois, you say Arthur Anderson asked you to write this?

A. Well, we all went together.

Q. Who do you mean by "we"?

(Testimony of C. R. Poncia.)

A. Well, all the group, and I say I will sign it.

Q. Did Arthur Anderson ask you to sign this letter?

A. He would want to find out how the land was being—

Q. Was this the first letter?

A. No, I think there was one more, a petition.

Q. That's the one that was signed by lots of people? A. Yes.

Q. Did you go around with that petition and get people to sign it? A. No, sir.

Q. Who did?

A. They come to the house and asked to sign it; they was willing to sign.

Q. You had the petition there at your saloon then? A. Yes.

Q. And you people up there, and the miners, thought that was a mineral country, didn't you?

A. Yes, we always did, and we think so yet; we have taken out considerable money yet every year.

Q. You say that Arthur Anderson told you that when he come down to prove up he went to the land office, and that Wells and Kinkaid took him into another room in the land office and gave him some money?

A. Mr. Kinkaid he took Arthur into a place, into some of them rooms in the land office, I don't know where they was, but I think they was down below there, and he give the money to prove up to Arthur.

Q. And then Arthur took the money and went in and proved up? A. Yes.

(Testimony of C. R. Poncia.)

Q. And then went back and got \$137.50?

A. He got \$137.50.

Q. And that was all there in the land office?

A. Yes.

Q. And that is what Arthur says?

A. Yes.

Q. And he told you that after he came back from proving up? He hadn't told you that before?

A. No.

Q. But that was after he proved up?

A. Yes, after.

Q. Arthur is a man that doesn't tell the truth very well, does he?

A. I don't know; he is just like anybody else, I guess.

Q. You said that he was on the stand one time and testified one way, and another time and testified the other way. How did he testify the first time?

A. The first time he stood in on his right.

Q. What did he testify to that time?

A. I don't know anything about his testifying.

Q. What made you say that he testified once one way and the other time the other?

A. Well, one time he was one way and the next time the other way.

Q. Which was he the first time—for the Government or against the Government?

A. Against the Government the first time.

Q. How was he the second time?

A. Second time for the Government.

Q. How do you know what he was the other time?

(Testimony of C. R. Poncia.)

A. I don't know; that's just what he told me.

Q. You don't know anything about it?

A. No.

Q. You don't know anything about how he made his entry?

A. No, I know only how he got his money.

Q. Do you know that only from what he told you?

A. That's all.

Q. You didn't see him get the money?

A. No.

Q. And you don't know how he proved up on his claim?

A. No, I don't know.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. You have had two drinks this morning?

A. Yes.

Q. Will two drinks make you drunk?

A. No, sir.

Q. Are you drunk now?

A. I don't suppose I am.

Q. Do you know what you are saying?

A. Yes.

Recross-examination.

(By Mr. BUNDY.)

Q. You say you think you are about the same drunk as Arthur Anderson was up there?

A. Not any worse.

(Witness excused.)

[Certain Offers in Evidence, Etc.]

Thereupon counsel for the complainant produced and offered in evidence six letters, purporting to con-

stitute correspondence between L. G. Chapman, manager of the Barber Lumber Company at Boise, Idaho, and H. S. Rand, one of the defendants to this bill, dated at Burlington, Iowa. These letters are admitted in evidence, and it is stipulated by and between counsel for the respective parties, in open court, that the letters offered are signed by L. G. Chapman, manager of the Barber Lumber Company, and the defendant, H. S. Rand, and were sent and received by the parties to whom they were addressed in due course, which letters read as follows:

[Six Letters Admitted in Evidence.]

BARBER LUMBER COMPANY.

Boise, Idaho.

“James T. Barber, President,
William Carson, Vice President,
S. G. Moon, Secretary,
C. W. Lockwood, Treasurer,
L. G. Chapman, Manager.

May 22, 1905.

Mr. H. S. Rand,
c/o Burlington Lumber Co.,
Burlington, Iowa.

Dear Sir:—

We enclose herewith quit-claim deed covering lands on the Boise River which have been purchased in your name. Will you kindly execute the same and have it executed by Mrs. Rand and return it to us at your convenience.

Yours truly,

(Signed) L. G. CHAPMAN,

Manager.”

Enc.

“H. S. Rand, Prest. &
Treas.

Wm. Carson, Vice Prest.

T. G. Foster, Secretary.

Wm. Lyon, Superin-
tendent.

T. S. Archibald, Sales
Mangr.

BURLINGTON LUMBER COMPANY.

Manufacturers.

Burlington
Lumber Co.

Railroad Bridge Timber

A Specialty.

Burlington, Iowa, June 17, 1905.

L. G. Chapman, Mgr.,
Barber Lumber Co.,
Boise, Idaho.

Dear Sir:—Yours of May 22nd, containing deed, was received during my absence from home. I return the deed herewith as there must be some mistake about it. I have never received any notice from the Barber Lumber Company of their wanting to deed timber lands to me, and I have no personal knowledge of any of their timber holdings on the Boise.

Yours truly,

(Signed) H. S. RAND.”

BARBER LUMBER COMPANY.

Boise, Idaho.

"James T. Barber, President.

William Carson, Vice President.

S. G. Moon, Secretary,

C. W. Lockwood, Treasurer,

L. G. Chapman, Manager.

June 27, 1905.

Mr. H. S. Rand,

Burlington Lumber Co.,

Burlington, Iowa.

Dear Sir:

I am at a little loss to understand your letter of the 17th inst., as you must have been advised of the fact that a number of timber claims taken by individuals under the Timber and Stone Act had been purchased in your name, as you executed on June 15, 1903, a quit-claim deed to the Barber Lumber Co. covering 11,840 acres of such lands, these being such lands as had gone to patent at that date. Since then, a number of other claims have gone to patent, and, for the purpose of making in one instrument a quit-claim deed to this company of all such lands, the deed which was enclosed with our letter of May 22nd was made that the records should be complete before the date of the assessment of the taxes for this year.

Naturally we are anxious to have the records show the land as being in the name of the Barber Lumber Co. and if, after further thought and this explanation, you are willing to execute the quit-claim deed to us which you returned, kindly advise us and

we will forward it to you again.

Yours truly,

(Signed) L. G. CHAPMAN,
Manager."

"H. S. Rand, Prest. &
Treas.

Wm. Carson, Vice Prest.

T. G. Foster, Secretary.

Wm. Lyon, Superin-
tendent.

T. S. Archibald, Sales
Mangr.

BURLINGTON LUMBER COMPANY.

Manufacturers.

Burlington
Lumber Co.

Railroad Bridge Timber
A Specialty.

Burlington, Iowa, July 8, 1905.

L. G. Chapman,
Mgr. Barber Lumber Co.

Dear Sir:

I am surprised to know that I have heretofore made a deed to any timber lands. My remembrance was only that the mill site was to be taken in my name. However, I have not title whatever to any of the lands owned by your company and in as much as you have taken the land in my name I will sign the quit-claim and return it if you will kindly return it to me.

However I wish after this you would kindly write

me whether you are going to take any titles in my name so that I may at least be advised of the fact.

Yours truly,

(Signed) H. S. RAND."

"James T. Barber, President,
William Carson, Vice President,
S. G. Moon, Secretary,
C. W. Lockwood, Treasurer,
L. G. Chapman, Manager.

BARBER LUMBER COMPANY.

Boise, Idaho.

July 20, 1905.

Mr. Horace S. Rand,
c/o Burlington Lbr. Co.,
Burlington, Iowa.

Dear Sir:—

I return herewith the quit-claim deed which was sent to you some time ago, and which you intimate in your recent letter that you will now execute. I am exceedingly sorry that any question or disagreeable feature to you has arisen in this matter, but you will understand that this arrangement antedates my connection with the Barber Lumber Co. in an official capacity and was, I presumed, entirely understood by you.

With kindest regards, I remain,

Yours truly,

(Signed) L. G. CHAPMAN,

Manager."

Enc.

“H. S. Rand, Prest. &
Treas.

Wm. Carson, Vice Prest.

T. G. Foster, Secretary.

Wm. Lyon, Superin-
tendent.

T. S. Archibald, Sales
Mgr.

BURLINGTON LUMBER COMPANY.

Manufacturers.

Burlington
Lumber Co.

Railroad Bridge Timber
A Specialty.

Burlington, Iowa, July 24, 1905.

Barber Lumber Co.,
Boise, Idaho.

Dear Sirs:—

Enclosed find deed as requested in yours of the
20th inst. Hoping the same is satisfactory to you,
I remain,

Very truly yours,

(Signed) H. S. RAND.

C. S.”

Mr. KEIGWIN.—Plaintiff offers in evidence cer-
tified copy of deed marked for identification Plain-
tiff's Exhibit No. 145A, and it is hereby stipulated
in open court that such certified copy is properly au-
thenticated and is admissible in evidence, and that
the same shall be received in lieu of the original

deed; and it is further stipulated that said deed contains, among other lands, all of the lands described in the bill which were conveyed to defendant H. S. Rand by the several entrymen entering the same.

Complainant thereupon offered in evidence three deeds, marked respectively Plaintiff's Exhibit No. 145B, 145C, and 145D, being respectively deed from George S. Long and wife to the Barber Lumber Company, dated April 10, 1905; deed from A. E. Palmer to the Barber Lumber Company, dated May 27, 1905; and deed from A. E. Palmer to the Barber Lumber Company, dated June 28, 1905, each of which deeds were recorded in the recorder's office of the County of Boise at the request of the defendant Barber Lumber Company, which deeds convey the lands described in the bill which were conveyed to George S. Long and A. E. Palmer by the several entrymen entering the same.

Mr. GORDON.—Counsel for complainant offer in evidence the ledger entries, the checks, and stubs, of Frank Steunenber, personal and as agent, embraced in the stipulation relative to the same.

Mr. BUNDY.—The defendant objects to the reception of the stubs, checks, and ledger account of Frank Steunenber, personal and agent, for the reason that the same is not competent evidence as to the amounts, dates, of the charges in the ledger account, or the checks or stubs, and particularly objects to the notations marked on the stubs and checks shown in the column remarks, for the reason that the same is not competent evidence as against the defendant Barber Lumber Company. This objec-

tion is not intended to raise any question as to the handwriting of Steunenberg on the checks and stubs, or as to the accuracy or genuineness of the ledger account referred to.

[Testimony of L. G. Chapman, on Behalf of the Complainant (Recalled—Redirect Examination).]

L. G. CHAPMAN, recalled as a witness on behalf of the complainant, testified as follows:

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Chapman, you have before you a bundle of letters that you have brought here in obedience to the subpoena duces tecum from the files of the office of the Barber Lumber Company at Boise, Idaho. I will ask you to look through those letters and tell us whether or not they are all the letters that are under your custody and control, possession, or that have been in your possession, custody, and under your control, relating to the transactions of the Barber Lumber Company in acquiring timber lands in the state of Idaho.

A. They are, to the best of my knowledge and belief, except the letters from Mr. Rand and the replies thereto.

Q. And the only letters that are not there that were written by you to Mr. Rand or by Mr. Rand to you, concerning the acquiring of title of the land of the Barber Lumber Company in the state of Idaho are those that have been put in evidence this morning by stipulation?

A. I presume so; all letters bearing on that sub-

(Testimony of L. G. Chapman.)

ject from Mr. Rand or to Mr. Rand were furnished in the Borah trial. I suppose those are the letters.

Q. Now, there has been reference made several times to the Borah trial. I will ask you whether or not what is referred to as the Borah trial was not the trial of Senator William E. Borah in September and October, 1907, upon an indictment charging him, jointly with the defendants James T. Barber, Sumner G. Moon, and others, with conspiracy to defraud the United States, based on the same transactions upon which this bill is bottomed, and that Senator Borah, upon that trial, was acquitted.

A. Yes.

Mr. KEIGWIN.—Q. Mr. Chapman, on the indictment which has been mentioned in Mr. Gordon's question, Mr. Borah was tried separately, I believe.

A. I believe so.

Q. And you were called as a witness in that case, I think.

A. Yes.

Q. And you had previously, in the preceding March or April, been summoned as a witness before the Grand Jury which was investigating these transactions, and which subsequently returned the indictment against Mr. Borah.

A. Yes.

Q. When you were subpoenaed before that Grand Jury were you required by that subpoena to bring any books and papers?

A. Yes.

Q. Was that a subpoena which was identical in its requirements with that subpoena which has been served upon you in this case?

A. I think it was.

(Testimony of L. G. Chapman.)

Q. It called for the same things?

A. It called for the same thing.

Mr. BUNDY.—It is understood that it is the same thing and called for the same thing.

Mr. KEIGWIN.—Mr. Chapman, in response to that subpoena, you declined to produce those books and papers? A. Yes.

Q. And the matter, I think—

A. Well, we first asked for an order of court, and obtained a modified order which we attempted to comply with, and there seemed to be a difference of opinion as between ourselves and the district attorney as to what the order meant, and finally a second order was made, and that we refused to comply with.

Q. And upon your refusal to comply with that, you were committed by Judge Beatty, the district judge of this district, as for contempt?

A. Yes.

Q. And upon that commitment you applied to Judge Gilbert, the circuit judge of this circuit, for a writ of habeas corpus, and upon that habeas corpus, after a hearing, you was discharged? A. Yes.

Mr. KEIGWIN.—We offer in evidence the petition—I show you this paper, Mr. Chapman, which purports to be a petition presented on your behalf, and ask you if you recognize that as being the petition for habeas corpus by which the proceedings for your release from commitment were instituted?

A. Yes.

Mr. KEIGWIN.—We offer in evidence the petition of the witness, Mr. Chapman, for habeas corpus,

(Testimony of L. G. Chapman.)

together with the accompanying exhibits, which we procure from the files of the clerk's office in this district, and which it is admitted are from the files of the clerk's office.

Mr. BUNDY.—We object to it as incompetent, irrelevant, and immaterial, not tending to establish any of the allegations of the bill.

Mr. KEIGWIN.—And in connection with that, we offer in evidence the order of Judge Gilbert, one of the circuit judges of this circuit.

Mr. BUNDY.—The same objection.

Mr. KEIGWIN.—Ordering the release of Mr. Chapman, the present witness, from confinement, upon the petition for habeas corpus.

(Marked Plaintiff's Exhibit No. 145E.)

Mr. KEIGWIN.—I show you, Mr. Chapman, a paper purporting to be addressed to the Honorable James H. Beatty, Judge of the District Court, and filed in this court, and purporting to be signed by you, which states reasons for declining to produce the documents called for in the subpoena served upon you and in the orders of the Court in relation thereto, and ask you if that is your signature.

A. Yes.

Mr. KEIGWIN.—We offer this in evidence.

(Marked Plaintiff's Exhibit No. 145F.)

Q. You handed that paper in to the Court, didn't you, Mr. Chapman? A. Yes.

Q. Personally or by your counsel?

A. Personally, I believe.

Q. Were you represented by counsel at the time?

(Testimony of L. G. Chapman.)

A. Yes.

Q. Who were they, if you remember?

A. A. A. Fraser and Lyttleton Price.

Q. I show you now, Mr. Chapman, a subpoena with a *deces tecum* clause, purporting to be issued in the district court for this district, under date of September 21, 1907, requiring you to appear and testify as a witness on behalf of the United States, in the case of United States of America vs. John I. Wells and others, No. 448, and ask you if that subpoena was served upon you.

A. As near as I can tell, it was; I couldn't recognize it, but I presume it was.

Q. You remember that you were served with such subpoena during the course of the trial of William E. Borah?

A. I was served with two or three subpoenas to appear before the Grand Jury.

Q. This was the Borah trial, September 21, 1907.

A. Yes.

Mr. KEIGWIN.—We offer in evidence this subpoena, which covers substantially the same ground.

(Marked Plaintiff's Exhibit No. 145G.)

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial.

Mr. KEIGWIN.—I show you now a paper filed September 30, 1907, with the clerk of this court, purporting to be signed by you, and to give reasons for a refusal to produce the documents called for in the subpoena previously served upon you, and ask you if that is your signature. A. Yes.

(Testimony of L. G. Chapman.)

Q. And that is the paper, is it, which you produced and offered to the Court when you were summoned as a witness in the trial of William E. Borah?

A. I think so.

Mr. KEIGWIN.—We offer this in evidence.

(Marked Plaintiff's Exhibit No. 145H.)

Here an adjournment was taken until two o'clock, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. L. G. Chapman resuming the witness-stand for further examination.

Mr. KEIGWIN.—Q. Mr. Chapman, in this paper, which is marked Plaintiff's Exhibit No. 145F, being an answer which you have identified as having been signed by you and presented to the Judge of this court in response to the subpoena duces tecum requiring you to appear and produce certain books before the Grand Jury, and the order of the Court to the same end, which was filed April 9, 1907, I see you state in this paragraph first, "I have had control and custody of all the books, papers, and records called for in the subpoena served upon me and referred to in the orders of the Court in reference thereto." Now was that a correct statement?

A. Well, I couldn't say without seeing just exactly what the subpoena was, but it probably should have been qualified by saying that—I think that was such papers and books as were in the custody of the Boise office.

Q. I show you, Mr. Chapman, a copy of the sub-

(Testimony of L. G. Chapman.)

poena, which you attached as Exhibit "A," to your petition for habeas corpus, and being the subpoena requiring you to appear before the grand jury in April, 1907. Now, Mr. Chapman, having examined the subpoena, and your answer thereto, what is your answer as to the correctness of that statement made in your answer, that you "have in your possession all the papers enumerated in the subpoena"?

Mr. BUNDY.—I object to that, for that is not a true statement of his answer; it isn't a true statement of the answer you are purporting to give to him.

Mr. KEIGWIN.—Let the witness point out where in it is—

Mr. BUNDY.—You purport to read from a document to the witness here.

Mr. KEIGWIN.—The document is in the possession of the witness and Mr. Chapman can state what he pleases about it.

Mr. BUNDY.—But I am not going to let you make a misstatement; the answer Mr. Chapman made to the Court wasn't that he was in possession of all the things named in the subpoena, as you have stated, but that he was in possession of all named in the subpoena and referred to by the Court. If you will read here, Mr. Chapman, your statement to the Court—

Mr. KEIGWIN.—I object to instructions being given to the witness by his attorney in answering these questions, and now that the suggestion has been made and instructions given, I ask the examiner to ask the witness to answer.

Mr. BUNDY.—I shall interfere whenever you in-

(Testimony of L. G. Chapman.)

tentionally or otherwise purport to quote from a statement and misquote.

Mr. KEIGWIN.—Did I misquote from the document?

Mr. BUNDY.—Yes, you did.

Mr. KEIGWIN.—Mr. Chapman, have I misstated the effect of your answer in any way?

A. I think we made no answer to the subpoena; we made an answer to the order of the Court.

Q. What do you say in your answer to the order of the Court?

A. I say, first, I am general manager of the Barber Lumber Company.

Q. Only in regard to the matter in which Mr. Bundy says that I have intentionally misstated the effect of your answer.

A. I have had control of all the books, papers, and records called for in the subpoena served upon me and referred to in the orders of the Court in reference thereto.

Q. Wherein does my question misstate the effect of your answer?

A. Well, at some time during the proceedings with reference to this subpoena and our answer thereto, the fact was brought out as to what we had in our possession here and what we had not, that was covered by the subpoena; I don't remember just when it was, or how it was arrived at; it was explained here before Judge Beatty as to just what we had in our possession.

Q. What I am trying to get at now is this, wherein

(Testimony of L. G. Chapman.)

does my question misstate the effect of your answer or mislead you in any way?

A. The subpoena reads, "all the papers, stock-books, and minutes of meetings, etc., both of directors and stockholders of the Barber Lumber Company," which have never been in the possession of the Boise office or myself.

Mr. BUNDY.—I don't know as you intended it, Mr. Keigwin, but your question said that the answer, as you attempted to quote it to Mr. Chapman—

Mr. KEIGWIN.—I want Mr. Chapman to state wherein he is misled.

Mr. BUNDY.—Mr. Chapman isn't being misled, but you attempted to mislead him, intentionally or otherwise.

The EXAMINER.—You may ask your questions and let Mr. Chapman answer them, and if Mr. Bundy desires either to object to the question or answer he has the privilege of doing it.

Mr. BUNDY.—And I also have the privilege, every time counsel attempts to misquote a document in this case; he can't do it, and I won't sit here and permit it.

The EXAMINER.—Mr. Chapman is an intelligent man, and he understands all these books and papers perfectly, I presume, much better than the rest of us, and he certainly will understand it so well if a question misstates or attempts to mislead him.

Mr. BUNDY.—We won't have to wait for Mr. Chapman; I will make the objection to misleading questions.

(Testimony of L. G. Chapman.)

Mr. KEIGWIN.—Now, Mr. Chapman, will you indicate wherein the question which I put to you, before Mr. Bundy's objection, misstated the effect of your answer, which I had previously read from your paper.

A. The answer which we made, copy of which you gave me here, was made to Judge Beatty, after he had made his first order, and was made to the order and not to the original subpoena, which had been modified by his first order; that is the way I understand it.

Q. You remember that a few minutes ago I read to you a sentence from your answer, which I then held in my hand, to the effect, as I recall it now, that you had had the custody of the documents named in the subpoena previously issued to you, and that afterwards I handed the paper to you. That is correct, is it not? A. That is correct.

Q. And you have that paper in your possession now? A. Yes.

Q. And that then I asked you a question as to the correctness of that sentence in your answer, to which question Mr. Bundy objected, upon the ground that I had misquoted your answer, and was endeavoring to mislead you. Now I ask you wherein did I misquote your answer, and were you misled?

Mr. BUNDY.—He has just told you.

Mr. KEIGWIN.—No, he hasn't told me yet wherein I misquoted.

Mr. BUNDY.—Your own statement of it shows that it is a gross misrepresentation.

(Testimony of L. G. Chapman.)

A. You handed me the statement which we made to Judge Beatty, and you asked me in what respect—in asking the question then you referred to the subpoena. The answer we made was to the subpoena referred to, quoting from this letter in the subpoena served upon me, and referred to in the orders of the court with reference thereto. We make this answer to the order of the Court, not to the original subpoena. It apparently states that we have had in our possession all the books and papers covered by the subpoena, but it says, all the books and papers covered by the subpoena served upon me and referred to in the orders of the Court in reference thereto; we made the statement as to the order of the Court, I think. I don't know whether you get my meaning clearly.

Q. I do; I get your meaning clearly enough, but I don't make myself clear to you. Your answer addresses itself to the correctness of the response which you made to Judge Beatty. My present question now is as to the discrepancy between your answer and the statement of your answer which I made to you, and to which Mr. Bundy objected on the ground that I was endeavoring to mislead you. Now wherein did my question vary from the answer as you have it there before you?

Mr. BUNDY.—Your question is of record, and the answer before him is of record. Anybody that can read can see wherein they differ.

The EXAMINER.—If Mr. Chapman can't answer the question the only inference is that the answer was

(Testimony of L. G. Chapman.)

not misquoted, I suppose.

Mr. BUNDY.—I ask that the Examiner's statement be stricken out. I don't know why the Examiner should volunteer such a statement as that. I ask that it be stricken out. There is no such inference to be drawn. Mr. Chapman hasn't failed to answer. If the Court would hear the question and would hear this, the Court would see in a moment the righteousness of the objection I am making. I don't think that the Examiner has any authority to make any such suggestions as that, and I ask that it be stricken out. Mr. Keigwin, purporting to read from a document in his hand, says, "In your answer to Judge Beatty you said that you had the custody of all the books and papers mentioned in a certain subpoena," which isn't true; the answer doesn't say any such thing.

The EXAMINER.—Mr. Chapman can state that, can he not?

Mr. BUNDY.—He has stated it two or three different times.

The EXAMINER.—We don't want to pursue this too long; it don't seem to me that it is very important. But at the same time, if Mr. Chapman was misled by the quotation he can say so, or if he can't answer it he can say so.

Mr. KEIGWIN.—Now, Mr. Chapman, you remember that I did read a sentence or two from that answer which you now hold in your hand, and that at the time I read that sentence I had the paper in my hand. That is correct, is it not?

(Testimony of L. G. Chapman.)

A. Yes.

Q. And I read it correctly, did I not?

A. I think you did.

Q. Then I delivered the paper to you, and, without having the paper in my sight, in the course of a question which I put to you, I endeavored to recite the substance of that sentence which I had just read.

That is true, it is not? A. Yes.

Q. That is, I pretended to recite the substance.

A. Yes.

Q. Mr. Bundy objected at that point, upon the ground that I had deliberately undertaken to misstate the effect of that sentence which I had just read, which was not then before me, but was at the time in your hand, and you were following me, and Mr. Bundy undertook then to suggest that I was endeavoring to mislead you, while you were reading from that paper. Now, will you state from your reading from that paper as I put my question to you, in which I attempted to recite the substance of that sentence, wherein I misquoted it.

A. Only in omitting the words, "and referred to in the orders of the court in reference thereto." I got the impression that you were assuming that we had made this answer acknowledging the custody of all the books, papers, and records, covered by the subpoena, which I don't think are the facts. The original subpoena was modified, and to that modification, through the Court's order, we made this answer.

Q. Well, were you misled by what I said?

(Testimony of L. G. Chapman.)

A. Well, I thought you were trying to gain an admission that we had acknowledged the custody of all the papers and books that were mentioned in the subpoena.

Q. But you were not to be entrapped by a thing of that kind?

A. Well, not just then; I might be.

Q. It seems that there has been a charge made against my professional integrity here, and I want the record to show whether or not I have been guilty of professional misconduct. Now, Mr. Chapman, my error then, as I understand it, consisted in the fact that I failed to distinguish in putting my question to you between the matters which were enumerated in the subpoena and matters which were covered by the subsequent order of the Court?

Q. That is the extent of my misstatement?

A. Yes.

Q. Well, for that I will duly apologize to the witness and to Mr. Bundy and to the Court, and to everybody who has been in the slightest degree prejudiced or disconcerted by any oversight of mine. Now, Mr. Chapman, as I understand, there is in your apprehension, or there was in your apprehension a difference between the matters enumerated in the subpoena which you were called upon to produce and the matters which were within the scope of Judge Beatty's order requiring you to produce books and papers. In other words, as I think you said awhile ago, the extent of the subpoena was somewhat limited by Judge Beatty's order.

(Testimony of L. G. Chapman.)

A. That is the way I understand it.

Q. To what extent and in what way was the scope of the subpoena limited by the order of the Court?

A. I can remember—

Q. Let it appear, if you please, that the subpoena and the order of the Court are in the hands of the witness for comparison by him. I admit that I haven't compared them.

A. As we understood it at the time—I couldn't say as to the comparison here in writing—but as the matter was understood at that time, there was a great difference between the subpoena and the first order made by Judge Beatty. I remember his oral statement better than the written order.

Q. Do you remember what papers or books were enumerated and called for by the subpoena which were not required to be produced by Judge Beatty's order?

A. Well, I am answering now as to my understanding of Judge Beatty's order from my recollection, but at some time, either before the Grand Jury or before Judge Beatty, it was stated that the stock-books, minutes of meetings, of directors and stockholders were not and never had been in our possession, in my possession.

Q. Stock-books and minutes of meetings?

A. Stock-books and minutes of meetings; perhaps some other items.

Q. Is that all?

A. And the manner in which these accounts should be exhibited was understood differently at

(Testimony of L. G. Chapman.)

that time, Judge Beatty stating that we should produce such of the accounts as had a bearing upon the acquiring or perfecting of title to timber lands, and in regard to that there was afterwards a difference of opinion between ourselves and the United States attorney.

Q. Well, now, at the time that you made that answer, under date of April, whatever it was, 1907, you did have in your possession all the books and papers which were called for by Judge Beatty's order of a day or two previous?

A. Well, I don't know; I would have to look at the order. (Witness examines papers.) They are not included in the order of Judge Beatty.

Q. What are not included?

A. The stock-books and minutes.

Q. With the exception of the stock-books and minutes, which were omitted from the order of Judge Beatty, you had, in April, 1907, the custody and possession of all the other books and documents enumerated in the subpoena, did you?

A. We had everything enumerated in this court order.

Q. And to that you made a correct return in this answer which you have in your hand, and stated that you had the possession and custody of those articles. Is that true? A. Yes.

Q. Did you draw that answer yourself, Mr. Chapman, or was it drawn by your counsel?

A. It was drawn by counsel.

Q. Now, coming down to the subpoena duces

(Testimony of L. G. Chapman.)

tecum which issued to you at the time of the trial of Senator William E. Borah, that being the cause entitled the United States of America vs. John I. Wells and others, I will ask you to examine this subpoena and state whether or not at the time that it was served upon you, in September, 1907, you had in your possession and custody all of the books, documents, and other articles which are therein enumerated? A. I did not, no.

Q. What was there in that list of books, papers, and other articles which you did not have in September, 1907?

A. All those books covered by the first sentence, reading, "all stock books or other records showing the owners, past and present, of the stock of the said Barber Lumber Company, and all transfers and assignments of the stock thereof."

Q. Now, those books correspond with what you have, in your previous answer, called the stock-books and minutes of meetings, do they not?

A. They do with the stock-books.

Q. This order said nothing about the minutes of meetings, does it?

A. This also includes here the articles of incorporation and by-laws of the Barber Lumber Company, and the minutes and records of the meetings of the stockholders and directors of said Barber Lumber Company from the date of its organization.

Q. Those things I suppose you never had, because they were kept at Eau Claire?

A. They have never been in Idaho. Of course,

(Testimony of L. G. Chapman.)

this calls for all the correspondence of said company or any officer thereof, etc.; of course we never had any except what was directed to or from this office.

Q. In your answer to the second subpoena duces tecum, being that served upon you in September, 1907, during the trial of Mr. Borah, and which has been identified by you, and marked Plaintiff's Exhibit No. 145H, you say, "I have never had control of some of the books, papers, and records called for in the subpoena served upon me," and I hand you that document and ask you, in order to avoid any unpleasant misunderstanding, to read that sentence and state whether, in that sentence, you had in mind the books, papers and documents which you have just enumerated as not having been in your possession because they were kept at Eau Claire?

A. When I answered as follows: "I have never had control of some of the books, papers and records called for in the subpoena served upon me," I did have in mind the stock-books, minutes of meetings, and directors and stockholders, by-laws and incorporation papers of the Barber Lumber Company.

Q. And also the correspondence of the company which would not properly be on file here. You want to add that, don't you? A. Yes.

Q. I don't want to mislead you, Mr. Chapman, notwithstanding Mr. Bundy's suspicions. I am not going to get you into any trouble.

Mr. BUNDY.—You are not going to with any such methods as that.

(Testimony of L. G. Chapman.)

Mr. KEIGWIN.—If I wanted to get Mr. Chapman into trouble, I wouldn't go at it in that way. I think Mr. Chapman could probably take care of himself.

Q. Now, Mr. Chapman, did you prepare this last answer yourself or was that prepared by counsel?

A. That was prepared by counsel.

Q. Then, as I understand, the books, papers, documents and other articles which were called for by this original subpoena of April, 1907, and the books, papers, documents and other articles called for by the subpoena of September, 1907, at the Borah trial, to which you made your second answer, were the same books and papers which you have produced here in response to the subpoena duces tecum issued in this case, with the exception of the stock-books, minutes, records of stockholders, and other correspondence which are properly on file at the Eau Claire office, articles and by-laws.

A. Yes.

Q. So that this mass of material which you have produced here is precisely the same material which you had in your possession in September, 1907, and in April, 1907, at the time these two former subpoenas were served upon you?

A. Yes.

Q. Now in these answers I notice that you decline to produce those papers. Did you produce them?

A. No.

A. In the proceedings had upon the original subpoena duces tecum, that of April, 1907, requiring you to produce those papers before the Grand Jury,

(Testimony of L. G. Chapman.)

the Court held that you were in contempt for refusing to produce them, I believe. A. Yes.

Q. And you were thereupon committed?

A. Yes.

Q. And thereupon you sued out this petition for habeas corpus which has been put in evidence here to-day, upon which you were released by Judge Gilbert? A. Yes.

Q. And the proceedings upon that writ of habeas corpus constituted the case of *Ex parte Chapman*, which you referred to yesterday? A. Yes.

Q. And which case, I suppose you know, is reported in the 153d volume of the Federal Reporter?

A. I don't know where it is reported.

Q. The 153d, isn't it?

A. I believe it is, but I am not sure.

Q. Now, Mr. Chapman, in answering on both of these occasions to these subpoenas duces tecum that these papers would tend to incriminate you, what did you have in mind as being of an incriminating character?

A. I had no particular entry or entries in mind at that time.

Q. Is that all the answer you wish to make to that, Mr. Chapman?

A. The answer was made on advice of counsel, and was made with the firm belief in our minds that the prosecution of these cases was in extremely unfriendly hands, both in the United States land office in Boise, and the United States Attorney's office. We also believed that there was some incentive

(Testimony of L. G. Chapman.)

for the prosecution of these cases which had been instigated by the defense in the Haywood-Moyer trials, which were about to take place, because of the connection between Ex-Governor Frank Steunenberg and the Barber Lumber Company, and his connection in those cases. And we also declined because of the statement which was made in court by the United States attorney that there was evidence before the Grand Jury—I read this from this exhibit touching the acquisition of lands by the Barber Lumber Company—of which the witness Chapman might be and very likely was ignorant, and therefore he could not be permitted to be the judge as to whether or not the evidence which he offered is pertinent. We believed that the production of the books, without restriction, would place in their hands material which might be construed to mean incriminating evidence as against myself, and on that account we made the answer that we did.

Q. Mr. Chapman, were you implicated in any way in the murder of Governor Steunenberg?

A. Not that I know of.

Q. Governor Steunenberg was a business associate and to some extent a friend of yours, wasn't he?

A. He was.

Q. Were you ever charged or suspected of being implicated in the murder of Steunenberg?

A. There have been open rumors that the Barber Lumber Company might have had an interest in his death.

Q. Have you ever been charged with being an ac-

(Testimony of L. G. Chapman.)

cessory? A. I believe not.

Q. Do you believe that anyone ever suspected you of being interested in the assassination of Governor Steunenberg? A. I hope not.

Q. You never committed an assassination in your life? A. No.

Q. Do you remember when Haywood and Moyer and others were charged and tried with having assassinated Governor Steunenberg?

A. Very distinctly.

Q. In what month?

A. I think in the month of April.

Q. Of what year?

A. April or May, in 1907 or 1908—1907, I think.

Q. Can't you be sure that it was 1907?

A. 1907, I believe.

Q. Then this second subpoena was served upon you, and you made answer to it some five or six months after the termination of that trial, did you not? A. I think it was after.

Q. Did you still have any apprehension that you might remotely be implicated in the assassination of Mr. Steunenberg?

A. I don't think I ever admitted that I might have been.

Q. In what way and to what extent were you influenced to apprehend that some incrimination might come to you on account of the death of Governor Steunenberg or on account of the proceedings for the punishment of his supposed murderers?

A. I don't think I did in any way. I mentioned

(Testimony of L. G. Chapman.)

Q. Did you think that you had been guilty of that as one of the reasons for our believing that the criminality? A. No.

disposition of the prosecution was intensely unfriendly and unfair.

Q. Well, then I understand you that the reason that you didn't want to produce these books was that the sentiments of the persons concerned in the prosecution of Governor Steunenberg was unfriendly to you. A. Yes, one of the reasons, yes.

Q. Well, now, isn't it a fact then, Mr. Chapman, that for the purposes of this answer of yours the murder of Governor Steunenberg could be left out of consideration?

A. So far as I am concerned.

Q. That is to say, there was nothing connected with the taking off of Governor Steunenberg that led you to apprehend that you might be involved in any criminal proceeding? A. No.

Q. You have mentioned the fact that the district attorney had said that there was some evidence before the Grand Jury touching the acquisition of these titles by the Barber Lumber Company of which you might possibly be ignorant, and have stated that as one reason for apprehending that these papers might lead to some incrimination of yourself. Had you been guilty of any crime in connection with the acquisition of these titles?

A. Not to my knowledge.

Q. Did you know of any evidence which would tend to indicate that you had been guilty of any

(Testimony of L. G. Chapman.)

any crime? A. No.

Q. Weren't you very well satisfied that you were innocent of all crime? A. Yes.

Q. And could demonstrate that fact if anybody had the effrontery to charge you with crime?

A. With proper opportunity, yes.

Q. Then I will confess, Mr. Chapman, I don't see how this evidence before the Grand Jury could inspire you with any trepidation.

A. I was advised by counsel that it wasn't necessary to furnish any evidence which might.

Q. Was there any evidence in here which might tend to incriminate you?

A. In view of the statement of the United States Attorney, we assumed that there might be.

Q. This evidence that you didn't know anything about you thought might tend to incriminate you?

A. Yes, so he states.

Mr. BUNDY.—He has indicted a whole bunch on evidence that didn't show any incrimination. He has indicted a whole bunch that were dismissed.

Mr. KEIGWIN.—Q. Mr. Chapman, do you remember that when you appeared at the trial of Senator Borah, in response to this subpoena duces tecum, that Mr. Bundy, who is now present, appeared as your counsel, and offered this objection on your behalf?

A. He didn't appear as my counsel. He offered the objection, I believe, at the request of the attorneys for Senator Borah.

Mr. KEIGWIN.—You appeared as representing

(Testimony of L. G. Chapman.)

this witness, didn't you?

Mr. BUNDY.—I didn't. Of course the record will show here that I did. In court I did. I will state in connection with this matter: I came from Wisconsin to Idaho at the request of the Barber Lumber Company, knowing that there was on file here at that time this bill of complaint attacking the title to their lands, and on my arrival here at Boise was informed that Mr. Barber and Mr. Moon had been arrested back in Wisconsin on an indictment which we had heard, from newspaper and other reports, had been returned against them. I came to Boise for the purpose of being a spectator at the Borah trial, never having had anything whatever to do with either the civil or criminal action at that time. I sat around here, not at the table, as representing Mr. Borah or anyone else, during the entire trial. Senator Borah—I had on one or two occasions the privilege of communicating with his attorneys—didn't want any objections made, and practically none were made. He wanted everything the United States offered to be admitted, and he wished his attorneys to cross-examine no witness or make any objection. When Mr. Chapman was subpoenaed to bring in the books, I was requested by Senator Borah's attorneys, not Mr. Chapman at all, to make the objection, in form which had been made for him before, and I did so, not only without the request of Mr. Chapman, but without consultation with him, and solely and entirely at the request of Mr. Borah's attorneys, and at that time I had never

(Testimony of L. G. Chapman.)

made an examination of the Barber Lumber Company's books or correspondence, didn't assume to advise one way or the other, and knew absolutely nothing about it. At the conclusion of the Borah trial I stayed at Boise a week or ten days, during which time I made an examination of the books, and, with the assistance of Mr. Chapman's office help, prepared a list of all their lands, and commenced, for the first time, my operations with this pending civil suit and my connection with the criminal suit against Barber and Moon. At that time Mr. Chapman paid me some money, which has been shown, and also, at my request, gave me two checks which I desired to use in obtaining local counsel before I left for Eau Claire, being the checks to Mr. Hawley and Mr. Fraser put in evidence. The records in the Borah trial will undoubtedly show that I appeared as Mr. Chapman's attorney, but I say not at his request; I did it in the manner stated.

Mr. KEIGWIN.—Then, Mr. Chapman, as I understand, without yourself knowing or believing that there was anything in these books that would tend to incriminate you, but upon the advice of your counsel, you declined to produce these books, upon that ground.

A. Well, I don't know that I would want to say that; I didn't believe that there might be something in those books that, under the statement of Mr. Ruick, might tend to incriminate me.

Q. I want to be perfectly fair with you, and I want you to make the thing just as plain as you can.

(Testimony of L. G. Chapman.)

Do you remember that on the occasion during the trial of William E. Borah, when you appeared in court in response to this subpoena duces tecum, you were asked by Mr. Rush, of counsel for the prosecution, this question: "Have you in mind anything now that would tend to incriminate you in connection with these books, any specific thing?" And that after the appearance of Mr. Bundy, and his objection, and the ruling of the Court upon that question, you answered, "Yes, sir." Do you remember that?

A. No, I don't remember it.

Q. Do you remember now whether or not, as a fact, that question was asked you and that answer given? A. I don't.

Q. Do you remember that this question was asked you and this answer given by you at that trial: "Will you name the books that you have in mind that might incriminate you? A. The ledger, cash-book, and journal." Do you remember that?

A. Well, I don't remember it as a fact, but I have no doubt that is the answer given; those are the entire books, in fact.

Q. Are those the books that you have produced here?

A. Those are the books we have produced here, or the transcripts from them.

Q. I mean, you have produced here the transcripts from those books which cover all the subject matter in the Borah trial and in this trial?

A. Yes.

Q. Mr. Chapman, is there any entry in any of

(Testimony of L. G. Chapman.)

these transcripts which you have produced which you regard as tending to incriminate you in any offense against the laws of God or man?

A. Not if carried through, and properly investigated, and properly explained.

Q. Do you think that if they were improperly investigated they might tend to incriminate you?

A. I think, improperly used, almost any books could be used to incriminate anyone, almost anyone.

Q. Even your private expense account?

A. Almost.

Q. Mr. Chapman, have you any objection, now that it is all over, to indicate to us whether or not you ever, in your mind, formed any conception or surmise as to any particular offense which you thought that an unfriendly prosecution might be able to connect you with by means of any entries in these books?

A. No, particular offense.

Q. Then as I understand you, the reason that you didn't want to produce those books, in April, 1907, and again in September, 1907, was that you thought the prosecution was in unfriendly hands, who might make some improper use of the books?

A. Undoubtedly.

Q. And your willingness to produce them today is a compliment to Mr. Gordon and myself, because you don't think we are so wicked. Now, Mr. Chapman, you have known Mr. William E. Borah for some time, I think, quite intimately.

A. Since 1903.

(Testimony of L. G. Chapman.)

Q. You have had not only business, but friendly social and personal, relations with him?

A. Yes.

Q. And were you in conference with him during the time he was on trial here? A. No.

Q. Did you have any business with Senator Borah during that period?

A. No, I think not.

Q. During the time that the Grand Jury was in session, in April, 1907, and after this subpoena had been served upon you for the production of the documents enumerated therein, you did produce a number of books, did you not, before you refused to go further?

A. Yes, we offered to produce before the Grand Jury just what we produce here.

Q. And did you produce before the Grand Jury what you produce here?

A. No, we did not.

Q. You changed your mind, didn't you?

A. No, they weren't willing to accept it.

Q. What did they want?

A. They wanted all the books in our custody.

Q. And then you took the ground that they might incriminate you? A. Yes.

Q. As I understand then, your first disposition was to produce the books, retaining them in your own custody, for examination in the grand jury-room.

A. To exhibit just such accounts as we have given you a transcript of.

(Testimony of L. G. Chapman.)

Q. Do you mean exhibit the accounts or the books?

A. Exhibit the books containing the accounts, those accounts in those books, so far as they related to these accounts.

Q. But not the other parts of the books?

A. Not the other parts.

Q. Then the contention between you and the Grand Jury, and afterwards between you and the Court, was as to your obligation to produce the books in their entirety, was it?

A. Rather as to whether we should give them the custody of the books.

Q. Were you willing to allow them to examine all the books, so long as the books remained in your own custody, or did you wish to restrict their examination only to those particular accounts which you have exhibited here in this proceeding?

A. I offered the Grand Jury the ledger index, with the statement that we would go into any of the accounts which they found the titles for there that had any reference to the acquiring of timber lands or perfecting title thereto, but this was before Mr. Ruick's statement in court as to the possible connection of my actions that he could obtain from these books.

Q. As I understand, you offered to show them the index and turn to any accounts which were indexed.

A. To explain what each individual account was, and exhibit such accounts as had a bearing upon the

(Testimony of L. G. Chapman.)

acquiring of or perfecting title to timber lands.

Q. But you were not willing to let the Grand Jury have the physical possession of the books and examine the pages themselves?

A. No, except in our presence.

Q. Were you willing to let them go page by page through the books as long as you kept the manual possession of the books?

A. I refused to allow them to go through the ledger, but in lieu of that offered them the index, and was willing to testify as to any of the accounts which they found there, and to exhibit such accounts as were pertinent.

Q. Well, now, you got along very amicably with the Grand Jury for awhile, didn't you?

A. Yes, for a few moments.

Q. Didn't you produce a good many papers and books that they wanted?

A. We took them into the room, but the difficulty arose immediately.

Q. You mean they wanted to keep possession of them? A. Yes.

Q. You did hand in some deeds and letters and other documents, did you not, which you allowed them to keep?

A. Yes, you have them here; those were furnished them; it is all a matter of record.

Q. The subpoena for the deeds was a separate subpoena?

A. It was a separate subpoena, two separate subpoenas.

(Testimony of L. G. Chapman.)

Q. And you responded to both? A. Yes.

Q. But when it came to the production of the books, then you had trouble with the Grand Jury?

A. Yes.

Q. Did you have any conference with Senator Borah in regard to that matter?

A. Well, when the subpoena was first served, I took it to Senator Borah, as our attorney, and he immediately advised me to get other counsel, that he didn't want to take any part in the advice with reference to our action in the matter.

Q. What ground did he give?

A. The assumption was, or rumor was, or he had known of the fact that he was under indictment.

Q. Was he indicted at that time?

A. I don't remember as to that, but it was currently rumored that he was.

Q. Did he tell you that he was indicted, or that he was going to be?

A. Well, that he was going to be, or that there was some talk of it, that he might be.

Q. Mr. Chapman, do you remember while you were before the Grand Jury, I mean during the period of your attendance upon the Grand Jury, Senator Borah came to your house late in the evening and asked you to go down town with him and had some conference with you about what you should do in respect of these books and other matters?

A. Senator Borah never came to my house in his life.

Q. Your hotel?

(Testimony of L. G. Chapman.)

A. No, nor where I roomed or boarded.

Q. I mean, of course, your lodgings.

A. No.

Q. Is it not a fact that Senator Borah found you, either at your house or your office, or somewhere else, on the evening before the day on which you refused to produce these books in the Grand Jury room, and went with you to the office of the Barber Lumber Company, and spent some time in going over the books and papers?

A. No, I don't think Senator Borah ever saw the inside of the books.

Q. He was not in the office of the Barber Lumber Company during that period of your attendance upon the Grand Jury?

A. Not to my recollection.

Q. You are sure he was not there at night?

A. No, I know he wasn't there at night. Senator Borah come to Judge Price's office one night when Mr. Fraser, Mr. Price, and myself were there, and remained about five minutes, and left, and during that time there was no talk about our case at all.

Q. Whose office was this?

A. Judge Price's.

Q. Judge Price and Mr. Fraser were your counsel in the proceedings before the Grand Jury, were they not? I think you said that Judge Price and Mr. Fraser, or one of them, prepared this answer that you made to the order of Judge Beatty?

A. Yes.

(Testimony of L. G. Chapman.)

Q. And did they prepare the answer you made in the Borah trial?

A. Mr. Fraser, I think, prepared it.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, about these books, I think in a few words maybe I can make a better record on these books than my friend Mr. Gordon has. Are the transcripts of books which you have produced here, and which have been offered in evidence, accurate, true, and correct copies of the original books which you keep for the Barber Lumber Company in this city? A. Yes.

Q. Have the Barber Lumber Company now, or had they at any time since you have had an office here, had any other books, or records in which you keep any accounts or any part of the accounts with reference to the money paid for and expenses incurred in buying and procuring timber lands in this state? A. No.

Q. So that the transcripts we have here, Mr. Chapman, are a complete and full record of all the accounts of every kind and character relating to the subject of lands in this state? A. Yes.

Q. Are you perfectly willing to give to these gentlemen representing the Government the physical possession of your books to let them search for any additional accounts? A. Yes.

Q. Now at the time this Grand Jury was in session Mr. Ruick was district attorney, was he not, Mr. Chapman? A. Yes.

(Testimony of L. G. Chapman.)

Q. And was it, or was it not, currently reported, general rumor, through the city here, that the indictments which were threatened against Mr. Barber, Mr. Moon, Mr. Borah, and others had certain relation to the political fight that was on here?

A. Yes.

Q. The anti-Borah fight, as it was called, wasn't it?

A. Yes.

Q. And was it also generally reported here, and believed by you and others, that these indictments were procured and were sought against the Barber Lumber Company and its officers for the effect it would have upon the community and the jurors in the approaching trials of Meyer and Haywood, for the murder of Governor Steunenberg?

A. Yes, it was.

Q. Governor Steunenberg was generally known here to have been intimately connected with and associated with the Barber Lumber Company in its enterprises, was he not?

A. Yes.

Q. And it was general talk and general supposition, and you were so advised by people living here, were you not, Mr. Chapman, that there would be an attempt made to discredit the Barber Lumber Company because of some supposed effect it would have by putting Governor Steunenberg under a cloud with the jurors?

A. Yes.

Q. I will ask you as to whether or not you were so advised by counsel who represented you, and others here supposed to be familiar with the trend of events here?

A. I was.

(Testimony of L. G. Chapman.)

Q. If you had had confidence that the officers of the United States Government, in charge of the Grand Jury, or prosecuting attorney's office, would have given you and the Barber Lumber Company honest and fair treatment, as these gentlemen are giving us, would there have been any objection whatever to have produced anything and everything you had?

A. No.

Q. Was your refusal prompted, in part at least, by the fear that any evidence you might furnish to the then prosecuting attorney's office would be used as a basis around which to build up a perjured cause?

A. I was.

Q. I will ask you one further question, Mr. Chapman—you needn't answer it unless you want to—as to whether or not it was generally and currently talked here that N. M. Ruick, who at that time was in charge of the district attorney's office in this city, was acting as attorney for the federation of miners, financing the defense of Meyer and Haywood. You needn't answer that unless you want to; maybe you won't want to go that far.

A. Well, I don't believe I will answer that.

Q. It was general talk here; I won't hesitate to say it. Mr. Chapman, in estimating and cruising timber lands through the Boise Basin, Crooked river, Clearwater, all through this section of the country, have you limited such cruising to lands that you have owned or had immediate prospect of purchasing?

A. No.

Q. State what has been the policy with reference

(Testimony of L. G. Chapman.)

to the company as to its cruising :

A. The policy of the company, and the instructions to cruisers, are and always have been to always get estimates on all lands bearing timber, in the vicinity in which they were working, if it was possible in the limit of time which they had at their disposal.

Q. I will ask you what the policy of the Northwestern Lumber Company was, back in Eau Claire, as to timber lands which they didn't own and had no immediate prospect of buying?

A. Always to get estimates on all lands that were tributary to any mill.

Q. It was generally know that, sooner or later, they would naturally be in the market, if it was tributary to that particular mill? A. Yes.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Mr. Chapman, Mr. Gordon and I have gone very carefully, not to say suspiciously, through this mass of correspondence which you have produced here from your files, as embodying all the correspondence had between your office and the Eau Claire office in respect of the acquisition of titles in this State, and we have been unable to find in any of these letters anything that points towards any criminality on your part. Do you know of anything of that kind in these letters? A. I do not.

Q. Then I think it may be agreed that these letters contain nothing which would tend in any way to criminate you, I mean to convict you of any of-

(Testimony of L. G. Chapman.)

fense. A. Why, I think not.

Mr. KEIGWIN.—For that reason, we don't offer these letters in evidence.

Mr. BUNDY.—There is one thing—I believe I mentioned it once before—gentlemen; there were a great many letters; when you got back to Eau Claire you will find a great many letters written at this end of the line by Mr. Chapman to Eau Claire, I think, probably on his first trip out here, and there being no office here there were no copies kept.

Mr. GORDON.—That was between the time of his first visit in 1903, and when he returned in 1904 and opened up his books?

Mr. BUNDY.—Yes, you will find quite a number of original letters on file back east of which there are no copies on file here, because they had no office.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, something was said yesterday about you paying bills here of Barber and Moon. You don't know what money Mr. Barber and Mr. Moon have been paying me in that criminal matter, do, you? A. No, I don't.

(Witness excused.)

**[Testimony of Edward E. Garrett, on Behalf of
the Complainant.]**

EDWARD E. GARRETT, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Edward E. Garrett?

A. It is.

Q. What is your occupation, Mr. Garrett?

A. I am in the land practice, land attorney.

Q. Did you ever hold any Government position in the State of Idaho? A. Yes.

Q. What was it?

A. I was receiver of public moneys, for something over nine years, up until the 22d of January, 1908.

Q. Receiver of public moneys? A. Yes.

Q. Is that what they call receiver of the land office? A. Usually, yes.

Q. And your office, prior to January, 1908, was in the land office, as receiver, at Boise, for nine years?

A. Yes.

Q. Mr. Garrett, during your incumbency as receiver of what is commonly known as the land office, at Boise, did you make any investigation of certain entries in your office of timber and stone claims, or timber and stone filings, or filings upon timber land under the Timber and Stone Act, of the entries of one Arthur Anderson, or Harvey H. Wells, Abel E. Hunter, James T. Ball, and Albert P. Nugent?

(Testimony of Edward E. Garrett.)

A. Those entries were under investigation in the land department, and cases involving the entries were tried in the office by me, yes.

Q. State how those cases were brought to your attention originally.

Mr. BUNDY.—The record in the cases is all in evidence, Mr. Gordon.

A. Originally they were called to my attention by the filings made by the parties named, in the fall, September, I believe, 1901; subsequently, after proofs had been offered, certain investigations were made by the special agent service, and charges were filed, which were brought to my attention, and, growing out of these charges, these hearings were had, and the entries investigated were canceled.

Mr. GORDON.—Q. The hearings were had before whom?

A. Before the land office; I presided in those cases.

Q. Now, do you remember of a general order of the Commissioner of the General Land Office or of the Secretary of the Interior suspending a number of entries, or was it a general order, or do you know of a general order to that effect?

A. Prior to the time these filings were made, I think on July 13, 1901, there was a general order made suspending final action in our office on timber and stone entries, of timber entries in the district.

Q. And how long did that order remain in force and effect?

A. That order was effective until in June, 1902,

(Testimony of Edward E. Garrett.)

when there was a new order, modifying or changing, practically annulling, that order, issued, I think about the 8th of June, 1902, about June 6th or 8th, about that time; I haven't recently examined the record.

Q. And at that hearing why did you hold those entries for cancellation?

Mr. BUNDY.—I object to that. The best evidence are the pleadings and decision in the case, all of which are in evidence.

A. We held them for cancellation because the evidence disclosed that they were fraudulent under the land laws.

Q. (By Mr. GORDON.) And will you state who appeared as counsel on behalf of the claimants?

A. Before the local office, Harry S. Worthman and Frank Martin. In the appeals, I think Mr. Martin prosecuted the appeals, though I think Mr. Worthman remained in the case.

Q. You mean he remained as attorney of record?

A. He remained as attorney of record in the case, yes.

Q. Now was Mr. Martin in the case when the hearings began?

A. No. Under the regulations, the entries were suspended on these charges of the special agent; notice of that order of suspension issued to the entrymen, and in response to that they applied for hearings. In those motions Worthman was the attorney, and when the hearings were ordered, on the day of trial Worthman appeared as their attorney. The

(Testimony of Edward E. Garrett.)

Government was represented by special agent Sharp, and at the beginning of the trial Milton G. Cage was associated with Mr. Sharp. At that time, Mr. Worthman, after some consultation, asked that Mr. Martin be associated with him in the case, and Mr. Martin entered into the case at that time, and conducted the trial on behalf of the defendants, that is, on behalf of the defendants Anderson, Harvey H. Wells, James T. Ball, and Abel Edward Hunter; the case against Nugent, as I remember, went by default; he made no appearance, and default judgment was taken.

Q. Mr. Garrett, do you know one William H. Taylor, who at one time was a timber cruiser and at the present time is a member of the legislature of the State of Idaho? A. Yes.

Q. Do you remember of him coming to the land office, where you were the receiver, and getting some plats with reference to land up on the Crooked River?

A. No, I don't remember of him getting any plats particularly for those lands, or any particular land; he used to be connected with land matters, and would frequently examine plats and records, but I don't remember of him getting plats particularly for that locality.

Q. Well, when lands are opened to entry, public lands are opened to entry, what was the custom of your office as to having plats showing the land that was opened to entry?

A. Well, we had the plats of the official surveys; we had plats of official surveys of all the public lands

(Testimony of Edward E. Garrett.)

that had been surveyed in the district, and those plats shows all entered lands, and the vacant lands, showed the status in a general way of all the surveyed lands in the district.

Q. When any of those lands were entered, would there be any reference made to it, or any mark made on those maps indicating that the lands so entered had been entered, before final proof?

A. Yes, any filing or any entry, filing or entry or application which acted as a segregation of the lands, such as an application for timber and stone entry, or homestead entry, or scrip filing of any kind, was entered first upon the plats at the time the application was made and filing tendered.

Mr. KEIGWIN.—Q. You mean the first notation of the application would be made on the plats?

A. Yes.

Q. And the entry of the application would afterwards be transferred to the tract-books?

A. The notations would be made subsequently on the register's and tract-books. The plats were pictures of the land, and those were always kept right up to date; in some instances the entries wouldn't be transferred on the tract-books for some little time. The segregation was always noted, however, immediately on the plats.

Mr. GORDON.—Q. Then the first thing done by you in your office when an application for entry was made was to indicate on the map that that application had been made for entry?

A. Yes, that was the practice of the office, always

(Testimony of Edward E. Garrett.)

to make the first entry, or immediately to make notation on the plats. The plats then showed at all times the status of the lands, or put one on inquiry as to the status of any of the lands. If there was a pending application—sometimes an application would come in that would be suspended for final action, for instance, a second homestead application, or a homestead application that was not complete, that didn't meet the full requirements of the regulations, and some additional evidence was required—a notation of that would be made on the plats, though not a permanent entry would be made on the plats at that time, so that the plats showed at all times practically the status of the lands, or there would be such a notation as would put one on inquiry as to any particular tract.

Q. Would that entry be made before there was any notation of it in the books by name and description?

A. Why, usually, yes; always it would be made upon the plat immediately after presentation. It might be made in fact simultaneously on some other record or plat, and it might be made on the record before on the plat, but it would be made on the plat at the time of application.

Q. Was there ever an occasion while you were in the land office that the plats and maps of land open to entry, either under the Timber and Stone Act, or the Homestead Act, that the notations indicating whether or not there had been an entry, an application to enter, any lands, public lands, open to entry,

(Testimony of Edward E. Garrett.)

were not kept up with the books in your office showing the same condition of the land, or applications for entry?

A. There might have been now and then an oversight as to some particular filing, but none for any length of time or for any number of filings, no. What I mean is, that an application which should be segregated on the plat might have been presented and overlooked by an officer or clerk temporarily, but there wouldn't be any general oversight of that kind; it would be very unlikely that there was any such case as that, that is, any number of them at one time.

Q. Then I understand you to mean that there might have been one or two entries marked on the books that temporarily or for a few days might not appear on the plats as showing that an entry had been made or an application had been made.

A. What I mean is, there might have been a clerical error or clerical omission for an entry, but there was no general omission of that kind that I remember of; there probably wasn't, very likely was none.

Q. Was there ever a time while you were employed as receiver of the land office that there would be entries of any great number—

Mr. BUNDY.—He just said there wasn't.

Mr. GORDON.— —which were omitted from the plat?

A. No, I am quite positive there was not any great number.

Q. During the whole time you were employed in

(Testimony of Edward E. Garrett.)

the land office was the condition of the records such that if a person came to the land office and was asked or asked and was shown plats of townships, were the plats in such a condition that he couldn't tell whether or not large bodies of land had been entered?

A. Well, if he was a competent man, familiar with the plats, he certainly could have told the status of the lands, or if he had asked he would have been told the status of them, and the plats would indicate the status of them. There might be parties that would come and couldn't read the notations on the plats, couldn't comprehend them, but the plats would indicate the status of the lands, as I have said.

Q. Do you remember when township 6 north, range 4 east, was opened to entry by the public?

A. Yes.

Q. State when that was.

A. The State's preference right of entry expired, as I remember it now, on September 12, 1903, which was Saturday, and they were opened to general entry by the public on September 14th, 1903.

Q. How did the State indicate what selection they had made?

A. I think it was on the last day, on Saturday, the 12th of September, 1903, that the State filed its selection of lands in that township, indicated it by their selection list.

Q. And do you remember what time of the day that was?

A. That the State filed?

Q. Yes.

A. No, not exactly; it occurs to me though that it

(Testimony of Edward E. Garrett.)

was in the afternoon.

Q. Do you know what time in the afternoon?

A. No, I don't remember.

Q. And that act of filing the plat or the list indicating what the State had selected in township 6-4, did that indicate, or did that give the public a right to enter that day, or did you receive entries before Monday?

A. We didn't receive any private entries, or entries by individuals, until Monday. There was a great many inquiries about, a number of inquiries about the opening of that plat township and several others that were opened at the same time. That was the ruling we made, that they were not open, the lands in those townships were not open, or any township where the State had made application for survey, were not open until the expiration of the State's preference right of entry. That would apply to any township except where they showed, the applicant showed a preference right of entry by reason of settlement antedating the time the State's right attached.

Q. Now, was there anything peculiar about the manner in which the persons that subsequently filed in 6-4 arrived at the land office?

A. Well, there was, the moment the plats were opened, the lands were opened to entry, there was a line-up, what we call a line-up, in the land office; the applicants were in line, ready to file.

Mr. KEIGWIN.—Q. What day was that, Mr. Garrett?

(Testimony of Edward E. Garrett.)

A. That was Monday, September 14, 1903, as I remember.

Mr. GORDON.—Were you at the land office on the Sunday prior to that? A. Yes.

Q. And were there any people in line that day?

A. They were in line at the front door, lined up at the front door all day Sunday, I think; I think the line started Saturday afternoon, as I remember, or Saturday evening, and I think it was longer Monday morning than it was even Sunday evening; there was more Monday morning than there was Sunday evening or Saturday evening.

Q. Did you know most of the persons in line?

A. I knew a number of them.

Q. And were their entries received according to the place they held in line?

A. Yes, they were received according to the place they held in line at nine o'clock Monday morning; there were some in line prior to that time that weren't in line at nine o'clock.

Q. Do you know, can you call the name of any persons who had been in line and had lost their place in line?

A. Well, I think I could perhaps indicate that by calling the names of several who were in line at nine o'clock and weren't in line prior to that time; that is, there had been some substituted; evidently they had someone standing in line holding their place for them; and, as I remember it now, there was some complaint to me because of that; there were some people in the rear of the line who were interested in

(Testimony of Edward E. Garrett.)

lands over in township 9 north 2 east, and 9 north 3 east, over on the Payette River, who complained about this shifting.

Q. Do you know how many persons were in line Monday morning at nine o'clock?

A. Well, not exactly; it was something like thirty or more.

Q. And can you, by looking at this book, which is a record from the local land office, tell how those entries were made, the first ones that were made?

A. Yes, Margaret Scully was the first one in line at the time the door was opened at nine o'clock that morning.

Q. Do you remember whether Margaret Scully was in line Monday morning, or whether someone was holding her place in line for her?

A. She was in line at the time the office opened at nine o'clock; she wasn't in line, however, the Sunday preceding; she didn't hold the position in line before that, in fact wasn't in line before that.

Q. Do you know who was holding the place in line number one?

A. It occurs to me that there was a man by the name of George Chapman.

Q. Who is George Chapman?

A. Well, he is an old-timer here in town, an old man.

Q. What was his occupation?

A. Really I don't know; I have known of him—

Q. Is he a police officer or bailiff?

A. No, he was a man I had known about town.

(Testimony of Edward E. Garrett.)

Q. Or constable?

A. No, he was not an officer of any kind that I know of; I think that he has held a position as constable, or some such office.

Q. Was he a well-known character about town?

A. Yes, I think so.

Q. Now, who was the second person in line that you know of?

A. The next one in line at the time the office opened was George G. Eagleson.

Q. I wish you would state the order in which the entries were made in 6-4 on that day, the 14th of September.

A. Following George G. Eagleson was Mary J. Eagleson, Wheeler H. Martin, Thomas L. Martin, Anna Fisher, Harvey A. Pugh, Frederick A. Vahlberg—

Q. Did he make an entry in 6-4?

A. No. George Lee Zimmermann—

Q. I am asking who got the 6-4 entries.

A. I will indicate that. Jacob C. Allmon, and Allmon F. Church. The last five named, beginning with Pugh and ending with Church, made entries of lands in township 9 north, 2 east, commonly known as the Dry Buck section. They were local mill men of that locality. That township was opened at the same time as 6 north range 4 east. The next following Church was Lorin T. Kinert, Joseph Penrod, Alexander T. Ellis, Charles W. Clawson, Frank R. Martin, Joseph Ehrmantrout, Jr., George R. Avery, Andrew Campbell, Wilbert R.

(Testimony of Edward E. Garrett.)

Reeves, Willis A. Ross, Josie N. Ross, Margaret Ehrmantrout, Harry B. Noble, Cleora N. Snow, William R. Coleman, Charles B. Faraday, Rice J. Harbaugh, August Johnson; in township 9 north, range 2 east, Lester N. Simpson, 9 north 2 east; John K. Woodburn in 6 north 4 east; William B. Davidson, 6 north, 4 east. There were some more entries made that day, but those are all I could say were in line at the time the office was opened.

Q. Now will you, or have you, indicated all that are entered that day who did not make entries in what is known as 6-4?

A. In the line-up I have named, I have indicated those that filed on lands not in township 6 north, range 4 east.

Q. Now will you state the persons that made entries in 6-4, September 14, 1903, that were not in the line-up?

A. Following those that I have named were—all the 6-4 that entered that day have been named.

Q. Now, those whom you have named that did not make entries in 6-4 on that day, were they in the line-up? A. No.

Mr. BUNDY.—You don't mean that, Mr. Garrett.

A. Perhaps I didn't understand the question.

Q. (Last question read by stenographer.)

A. Those that I named as having made entries in township 9 north, range 2 east, were in the line-up, yes.

Q. And held the number of place in the line corresponding to the entry? A. Yes.

(Testimony of Edward E. Garrett.)

Q. Now, do you know of any of those persons in the line-up who had persons hold places for them in the line?

A. There was no ladies in line Sunday evening; a number of persons who were in the line-up Sunday evening didn't make filings, and I understood that they were holding places for women, and for some of the men who made filings, but I am not positive as to that.

Q. Do you remember how many entries were made in 6-4 on September 14, 1903?

A. I will have to count then—twenty-five.

Mr. BUNDY.—You have got them all here; there is no use in counting them; there is twenty-six.

The WITNESS.—I make it twenty-five.

Mr. GORDON.—Q. Did the description in the filing papers filed on September 14th, 1903, of any of the entrymen overlap or run into the entry of any other entryman?

A. There were no conflicts of entries in that township at that time, or the applications.

At this time an adjournment was taken until ten o'clock, A. M., Monday, March 8th, 1909, at which time, pursuant to adjournment, the taking of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. Edward E. Garrett resuming the witness-stand.

Mr. GORDON.—Q. Mr. Garrett, I understood you, when you were on the stand before, to say that there was a general order of suspension of entries under the Timber and Stone Act some time in 1901.

(Testimony of Edward E. Garrett.)

I will ask you to look at book marked "Department Letters April 9, March 22, 1901 and 1902," and state what that book is.

A. This is a file of letters from the general land office to the local land office at Boise, covering the dates mentioned.

Q. I will ask you if you find that general order of suspension in that book.

A. Yes, letter of July 13, 1901, suspended final action in the local office on all timber and stone entries in the district.

Q. All timber and stone entries in the Boise land district? A. Yes.

Q. I will ask you to read that letter into the record. I first ask you by whom is the letter signed?

A. Binger Herman.

Q. Who was Binger Herman?

A. Commissioner of the General Land Office.

"Department of the Interior.

General Land Office, Washington, D. C.

July 13, 1901.

Register and Receiver,

Boise, Idaho.

Gentlemen:

This Department has reason to believe that attempts are being made to make fraudulent entry under the timber and stone laws of valuable timber lands in the Boise, Idaho, land district, and that a great number of applications have been made under said act, and that the date fixed for making proof on same begins with this month and extends to Octo-

(Testimony of Edward E. Garrett.)

ber, 1901. I enclose herewith copy of office circular of instructions 'P' of May 14, 1895, relating to the taking of final proofs in public land cases, and you are advised that said regulations are still in force, and must hereafter be strictly complied with, particularly that portion of said circular which prescribes that 'all necessary oral cross-examinations will be made by attesting officers to further test the good faith of claimants and witnesses.'

In the timber and stone entries above referred to, it is the desire of this office that the special attention of each entryman and proof witness be called to section 5390 of the Revised Statutes relative to the crime of perjury, and that they be thoroughly cross-examined on all points bearing on their good faith. To this end a list of questions to be used by you in cross-examination of parties making final proof under the timber and stone act and their witnesses is being prepared, and will be transmitted to you. In the meantime you will cross-examine the parties in the manner deemed best by you, and issue no final certificate on any such timber and stone entries, but transmit same to this office, with your opinion, in each case.

You will not confine your inquiries and cross examination to the forms and questions sent you, but each answer of the party and his witnesses must be followed with such further questions as may be necessary to elicit the whole truth. I will not be satisfied with any proof taken in a perfunctory manner. With such proof you will submit your joint re-

(Testimony of Edward E. Garrett.)

port as to the conduct and bearing of the party and his witnesses while giving their testimony.

Very respectfully,
(Signed) BINGER HERMAN,
Commissioner."

This letter was initialed P. A. W. S. and O. K.'d by initialing W. D. H. Possibly I could explain that letter somewhat.

Mr. GORDON.—Well, explain that letter as best you can.

Mr. BUNDY.—What do you mean by explaining the letter?

A. Well, I happen to know the occasion for writing this letter.

Mr. BUNDY.—You happen to know why?

A. Yes, why this letter was written and the circumstances at that particular time.

Mr. BUNDY.—I think you had better confine yourself to reading the letter.

Mr. GORDON.—Will you explain, if you know, why that letter was written?

Mr. BUNDY.—I object as incompetent, irrelevant and immaterial, and calling for hearsay evidence.

A. In the fore part of the summer of 1901, I think in the beginning, possibly as early as in May, 1901, a large number of timber filings were made along the Payette River, the North Fork of the Payette River.

Mr. BUNDY.—I object to that statement as incompetent, irrelevant, and immaterial, not the best evidence of what entries were made in the land office.

(Testimony of Edward E. Garrett.)

Mr. GORDON.—Proceed, Mr. Garrett.

A. And about the first of July there had been perhaps something like seventy-five or one hundred entries in that locality made, or filings, and the special agent of the Secretary, not the special agent of the general land office, but the special representative of the Secretary of the Interior, Mr. Beverley, came to the land office and found that these filings were pending, and that the proofs would be heard during the latter part of August, and in September, up till about the first of October. At the time he was here there was no filings made in the Boise Basin or Crooked River sections, and he was here for the purpose of cross-examining the entrymen for these Payette River filings, and made a report, after conferring with myself, that called forth this letter. Later, when other entries were made, this order was held by the local office, by the register and myself, to affect all entries, until it was modified, even others that were not pending at the time it was written.

Q. Now, I will ask you what counties are included in the Boise land district.

A. Boise County, Ada County, Canyon County, Washington County, portions of Owyhee, Elmore, and Idaho counties.

Q. Now, do you know in what sections these Payette Lumber Company entries or Payette entries were made that you have referred to, what townships?

A. Yes, townships ranging from, or running from 11 north, 3, 4, and 5 east, to 18 north, 2, 3, and

(Testimony of Edward E. Garrett.)

4 east, along the North fork and some along the Middle fork of the Payette River.

Q. Now, do you know what townships compose what is called the Boise Basin?

A. Well, the Boise Basin proper lays in townships 6 north, 4, 5, 6 east, 7 north, 4, 5, 6 east, and 8 north, 4, 5, and 6 east.

Q. You say township 6 north 7 and 8?

A. 6 north, 4, 5, and 6.

Q. Well, now, what townships compose what is commonly known as the Crooked River country that has been referred to here a good deal?

A. Well, the Crooked River and its tributary drains, I think, 6 north, part of 6 north, 6 east, 6-7, possibly some of 6-8, and 7 north, 6, 7 and 8 east; I am not so positive just the townships along in that locality.

Q. Now, after this letter or general order that you spoke of, of July 13, 1901, did you treat all entries made in your office in the Boise land district the same way as you did the Payette entries?

A. All timber and stone filings, and entries, yes, up until the time of the modification of the order by general land office letter of June 6, 1902.

Q. And during that time, or during that period, can you recall any entries that were held up, or any entries that weren't passed on final proof?

Mr. BUNDY.—I object to his testifying to the records of the land office; the records are the best evidence of what were held up.

Mr. GORDON.—I will ask you, Mr. Garrett, if

(Testimony of Edward E. Garrett.)

you will go into the land office and get the land office records that will show that, please.

Mr. BUNDY.—We will agree that every timber and stone entry made in the Boise Basin prior to June 6, 1902, final proof was held up at Washington. That was true, wasn't it, Mr. Garrett?

A. Say all timber and stone proofs were held up during that period.

Mr. BUNDY.—Including all that were named in the bill. We will stipulate and admit that every timber and stone entry made which is mentioned in the bill of complaint in this action, or, if you prefer, every timber and stone entry made in the Boise Basin, the final proof of which was submitted before June 6, 1902, was held up, pending the approval at Washington by the Department of the final proof offered. That is as I understand it, Mr. Garrett; if that isn't correct, you will correct me.

A. Those were suspended and reported to Washington for consideration, not pending approval; they were reported back for approval and action by the local office.

Mr. BUNDY.—That refers to every timber and stone entry made in the Boise land office prior to June 6, 1902, including all these lands, and all others.

Mr. GORDON.—Now, I understand then that after this order of suspension all entries had to be referred to Washington.

A. Yes.

Q. And then were sent back for approval by the local land office.

(Testimony of Edward E. Garrett.)

A. All timber and stone proofs.

Q. Do you remember of any that were referred to Washington and then sent back for your approval, or the approval of the local land office, that were held up?

Mr. BUNDY.—Do you mean that were suspended, Gordon?

Mr. GORDON.—Yes.

A. During the fall and winter of 1901 and 1902, the fall and winter and spring of 1902, something like seventy-five to one hundred entries, proofs, under the timber and stone law had been made for lands in the Boise Basin. Along in April, 1902, these proofs were reported back, referred back by the general land office in batches for the action of the local office.

Q. Referred back to the general land office?

A. Referred back by the general land office to the local office for the action of the local office.

Q. Were all of those entries passed by you, or were they held up?

A. No, they came back, as I said, in April, began in April; they came back in batches; I think they were all, or nearly all, of them Boise Basin proofs, and the instructions accompanying these—

Mr. BUNDY.—Were the instructions in writing?

A. Yes.

Mr. BUNDY.—I object to the witness testifying to any instructions from the General Land Office which are in writing.

Mr. GORDON.—I hand you paper, being letter

(Testimony of Edward E. Garrett.)

dated April 22, 1902, signed Binger Herman, and ask you what that paper is.

A. This is a letter from the General Land Office, signed Binger Herman, with a stamp transmitting—

Q. Is it approved?

A. Yes—Referring back a large number of timber and stone proofs that had been suspended under that general order.

Q. I will ask you to read the letter. I show you letter of April 10, 1902, and ask you what that is.

A. This is also a letter from the General Land Office, referring back timber and stone proofs that had been suspended under that general order, for the action of the local office.

Q. By whom is that letter signed?

A. By Binger Herman.

Q. And both of them were received by you at the local land office, were they? A. Yes.

Q. Now, I will ask you to read those two letters.

Ans. "Department of the Interior.

General Land Office, Washington, D. C.,

April 10, 1902.

Register and Receiver,
Boise, Idaho.

Gentlemen:

By letter 'P' of July 13, 1901, you were instructed as follows: (Then follows letter that has already been read into the record). In accordance with said instructions, you have transmitted to this office a large number of timber and stone entries upon

(Testimony of Edward E. Garrett.)

which final proof has been made but no final certificate has been issued thereon.

A careful examination of the final proof in each of the said cases embraced in the attached list indicates that you have fully complied with said instructions, and discloses the following facts:

First. That due proof by publication of intention to submit final proof before you was given by each applicant, with the names of proof witnesses.

Second. That at the appointed time and place proof was submitted, and section 5392 of the Revised Statutes in regard to perjury was read to each claimant and witness who were examined, in accordance with the usual form 4-371.

Third. That correct answers were given by the parties in each case, showing their good faith and compliance with the law.

Fourth. You have submitted your joint opinion in each case, in which you say substantially that the regulations relative to the method of taking such proofs were carefully followed, that the questions propounded to the claimant and witnesses were explained fully when necessary, that you are satisfied that the answers were made understandingly, that you believe the entryman is making the purchase as a bona fide investment for himself, and you therefore recommend that the entry be allowed. In view of the foregoing, I return, under separate cover, the papers in the filings mentioned in the attached list. You are directed to carefully re-examine same and consider any information bearing on the good or

(Testimony of Edward E. Garrett.)

bad faith of the entryman which may have come to you since date of the final proof, and if you are satisfied beyond question that the claimant is acting in good faith, that he made the entry for his own use and benefit, and has not sold or mortgaged the land, you will issue the final certificate in each case on receipt of the purchase money. You will return the entry papers to this office with your regular monthly abstract of lands sold.

In connection with these entries (which appear to be situated within the "Boise Basin" or "Idaho City Basin") you are advised that a certificate, under the seal of the auditor and recorder of Boise County, Idaho, has been filed in this office, of which the following is a copy:

'State of Idaho,
County of Boise,—ss.

I, Joseph Penrod, ex-officio recorder in and for Boise County, State of Idaho, do hereby certify that I am the sole custodian of the records and files of said Boise County. I further certify that there are no agreements, contracts, bonds, deeds, conveyances, powers of attorneys, or other instruments on file or of record in my office purporting to convey or affect the title to any timber land, or any interest therein, situated within Boise Basin, or Idaho City Basin, Boise County, Idaho, that no such instruments have been filed or recorded in my office during the two years last past.

In witness whereof, I have hereunto set my hand and affixed my official seal, at Idaho City, Idaho, this

(Testimony of Edward E. Garrett.)

4th day of April, 1902.

[Seal]

JOSEPH PENROD,
Ex-officio Recorder.

Very respectfully,

(Signed) BINGER HERMAN,
Commissioner."

"Boise, Idaho, Land District.

List of timber and stone sworn statements upon which proofs have been made, but no final certificates have been issued, referred to in Commissioner's letter "P" of April 10, 1902, to the Register and Receiver.

No. of Sworn Statement.	Date of Proof.	Name.
287	Feb. 20, 1902,	Samuel Greig.
289	" 20, 1902,	Margaret Pearson.
288	" 20, 1902,	Sarah Greig.
267	" 12, 1902,	Wm. R. Simmons.
278	" 14, 1902,	Louis K. Burns.
272	" 13, 1902,	Henry F. Benedix.
279	" 14, 1902,	Gustave A. Rothine.
268	" 6, 1902,	John W. Lusk.
226	Dec. 5, 1902,	Arthur Anderson.
276	Feb. 13, 1902,	William Pearson.
269	" 13, 1902,	Laura Lusk.
255	Jan. 21, 1902,	Edward J. Davis.
254	" 21, 1902,	Mark T. Coffin.
253	" 21, 1902,	Fred R. Walker.
251	Oct. 21, 1902,	Joseph M. Hollister.
252	Jan. 21, 1902,	Leonora Hollister.
248	" 16, 1902,	Dean West.

(Testimony of Edward E. Garrett.)

249	"	16, 1902,	John J. Keane.
257	"	22, 1902,	Lewis L. Folsom.
258	"	22, 1902,	Wm. W. Abrams.
181	Sept. 30,	1901,	Emergine E. Soule.
184	Oct. 7,	1901,	Harry V. Robertson.
188	"	9, 1901,	George C. Fitschen.
186	"	14, 1901,	John McBirney.
193	"	11, 1901,	Nathan M. Gardner.
150	"	11, 1901,	Gunder G. Rogstad.
196	"	15, 1901,	Gus H. Harvey.
197	"	15, 1901,	Addie M. Harvey.
198	"	22, 1901,	Frank Richardson.
200	Nov. 5,	1901,	Helen Ellsworth.
203	"	9, 1901,	Henry A. Snow.
210	"	15, 1901,	Hiram H. Hurlburt.
201	"	14, 1901,	Herbert F. Strong.
206	"	14, 1901,	Julia M. Anderson.
202	14,	1901,	Beckwith E. Barteau.
212	"	21, 1901,	Daniel H. Flahiff.
214	"	23, 1901,	Chas. J. Burchard.
187	Oct. 9,	1901,	Ida B. Fitschen.
194	"	8, 1901,	Fred Brown.
218	Nov. 27,	1901,	James H. Hamilton.
213	"	29, 1902,	Minnie Snow.

(Formerly Lyons.)

242	Jan. 9,	1902,	George W. Moyer.
244	"	9, 1902,	Edward N. Crawford.
246	"	13, 1902,	John Bates.
183	Oct. 7,	1901,	Andrew R. Robertson."

Here an adjournment was taken until two o'clock.
at which time, pursuant to adjournment, the taking

(Testimony of Edward E. Garrett.)

of testimony was resumed, the Examiner and counsel for the respective parties being present, and Mr. Edward E. Garrett resuming the witness-stand.

Mr. GORDON.—Mr. Garrett, I think when we adjourned you had just concluded reading into the record the letter of the Commissioner of the General Land Office of April 10, 1902.

A. Yes.

Q. I show you letter dated April 22, 1902, addressed to the Register and Receiver, Boise, Idaho, signed Binger Herman, and ask you if you received that letter, and whether you received it from Binger Herman, the Commissioner of the General Land Office.

A. Yes, this is a letter received while I was receiver in the land office, from the Commissioner of the General Land Office, Binger Herman.

Q. I will ask you to read that letter into the record, please.

A. "Department of the Interior,

General Land Office, Washington, D. C.,

April 22, 1902.

Register and Receiver,

Boise, Idaho.

Gentlemen:

By letter 'P' of April 10, 1902, I transmitted, for your action, a list of forty-five final proofs on entries under the Timber and Stone Act on which no final certificates had been issued, it appearing that my instructions of July 12, 1901, relative to cross-examinations of claimants and proof witnesses had been fully

(Testimony of Edward E. Garrett.)

complied with and no fraud found. I transmit herewith a list of about seventy-five similar final proofs on timber and stone entries which have been examined by this office and found regular on their face and apparently made in good faith for the sole use and benefit of the entrymen. Said proofs will be returned to your office under separate cover.

You are directed to kindly re-examine same and consider any information bearing on good or bad faith of the entrymen which may have come to you since date of the final proof, and if you are satisfied beyond question that the claimant is acting in good faith, that he made the entry for his own exclusive use and benefit, and has not sold or mortgaged the land, you will issue the final certificate in each case on receipt of the purchase money.

You will acknowledge the receipt of said final proofs and return all upon which final certificates may be issued by you to this office, with your regular monthly abstract of lands sold.

Very respectfully,
BINGER HERMAN,
Commissioner."

(Signed)

The list referred to, attached, reads:

"Boise, Idaho, Land District.

List of Timber and Stone Sworn Statements upon which proofs have been made but no final certificates have been issued, referred to in Commissioner's letter "P" of April 22, 1902, to the Register and Receiver.

(Testimony of Edward E. Garrett.)

Number of

Sworn

Statement.	Date of Proof.	Name.
152	Sept. 14, 1901,	Thomas Davis, Jr.
156	" 16, 1901,	Mary C. Hamilton.
157	" 16, 1901,	Max S. Kern.
158	" 17, 1901,	Hugh B. Fulton.
159	" 18, 1901,	Nellie V. Sinsel.
160	" 18, 1901,	Charles J. Sinsel.
161	" 18, 1901,	Mary S. Haines.
164	" 18, 1901,	Walter E. Pierce.
165	" 18, 1901,	Georgie Pierce.
175	" 27, 1901,	Libbie Wood.
176	" 27, 1901,	Allan E. Wood.
178	" 27, 1901,	Annie E. Berendes.
179	" 24, 1901,	John W. Eastbridge.
180	" 24, 1901,	James H. Miller.
182	" 24, 1901,	Thomas S. McAloney.
195	Jan. 14, 1902,	Fay D. Young.
204	Nov. 13, 1901,	Patrick H. Downs.
208	" 18, 1901,	George Henault.
215	" 30, 1901,	William F. Snow.
219	Dec. 12, 1901,	John I. Wells.
220	" 12, 1901,	Homer C. Granger.
221	" 12, 1901,	Jennie E. Wells.
223	" 13, 1901,	Caleb L. Thompson.
224	" 10, 1901,	Harvey H. Wells.
225	" 10, 1901,	Albert P. Nugent.
227	" 10, 1901,	Abel E. Hunter.
228	" 10, 1901,	James T. Ball.
232	" 13, 1901,	Thaddeus M. Glass.
236	" 13, 1901,	Louisa Wilson.

(Testimony of Edward E. Garrett.)

- 237 “ 19, 1901, Kate Hunter.
238 “ 19, 1901, Michael Koppas.
239 “ 19, 1901, George N. Cutler.
245 Jan. 14, 1902, William B. Lawler.
250 “ 16, 1902, Oral Dye.
259 “ 24, 1902, Henry L. Clyne.
260 “ 28, 1902, Charles Nelson.
261 “ 28, 1902, Lewis Nibler.
262 “ 29, 1902, Louisa B. West.
263 “ 29, 1902, Gustave A. Link.
264 “ 29, 1902, Mary Link.
266 Feb. 5, 1902, Nels Erickson.
271 “ 2, 1902, David Taylor.
272 “ 7, 1902, Nellie Crawford.
273 “ 11, 1902, Harry A. Partridge.
274 “ 12, 1902, Walter L. Harrison.
275 “ 7, 1902, Lorin Case.
280 “ 26, 1902, Evelyn O'Farrell.
282 Feb. 24, 1902, Edwin H. George.
283 “ 24, 1902, John C. Cobban.
284 “ 24, 1902, Mary L. Cobban.
286 “ 20, 1902, Charles A. Walker.
290 “ 25, 1902, William B. Haight.
292 Mch. 5, 1902, Charles E. Frederick.
299 “ 11, 1902, Samuel W. Swan.
294 “ 6, 1902, Lelia Lee.
295 “ 6, 1902, Ida M. Briggs.
296 “ 6, 1902, Dora C. Burns.
297 “ 7, 1902, John U. Cassell.
298 “ 7, 1902, John P. Gary.
300 “ 11, 1902, Emma Swan.

(Testimony of Edward E. Garrett.)

- 301 “ 12, 1902, Uriah Flint.
302 “ 12, 1902, John F. Teada.
303 “ 13, 1902, Uriah F. McBurney.
304 “ 13, 1902, Lottie L. Stephenson.
305 “ 14, 1902, Martin S. Stephenson.
306 “ 20, 1902, James O. Baker.
307 “ 20, 1902, William F. Roberts.
308 “ 19, 1902, Wilbert F. Wilmot.
309 “ 28, 1902, Alexander J. Rowan.
312 “ 18, 1902, Mack Gillum.
313 “ 27, 1902, Althea Gillum.
314 “ 28, 1902, Henry Rice.
315 “ 21, 1902, John C. Monroe.
316 “ 26, 1902, Charles M. Wilmot.
317 April 7, 1902, Mary A. Monroe.”

Mr. GORDON.—Q. After you received those letters that you have just read into the record, what, if anything, did you do in compliance with the instructions contained therein?

A. I didn't issue the final papers or final certificate, or receipt rather, until after the regulations had been modified and there had been some correspondence in regard to the matter.

Q. How much later were the regulations made and the correspondence thereto, just as near as you can tell?

A. Well, the regulations I refer to is that letter of June 6, 1902, modifying the former requirements.

Q. Why didn't you comply with those instructions?

A. Well, since the proofs had been offered and

(Testimony of Edward E. Garrett.)

the return of these, since the proofs had been offered, we had taken the proofs, and the return of these papers, by these letters I had become convinced that there was fraud in connection with the entries, and under those instructions I refused to allow them.

Q. Now, I will ask you whether or not these entries that are attached to these two letters are papers, proof papers, that you had forwarded to the General Land Office in compliance with the general order of July 13, 1901.

A. Yes, those were proofs that had been filed subsequent to that order, offered subsequent to that order, and that had been forwarded, under instructions in that order, to the General Land Office.

Mr. BUNDY.—Did I understand you to say that you didn't issue final certificates?

A. I testified that I didn't follow the instructions immediately, until after there had been some correspondence and the regulations had been modified.

Mr. BUNDY.—That is, up to June 6th?

A. Yes, those instructions were, if you will note, were that if we were satisfied beyond question that they were regular we should issue the papers. We held those proofs, those letters, for some time, awaiting developments, and finally, in May, we reported to the Commissioner that we weren't satisfied beyond question that these entries were regular, and asked for further instructions.

Mr. BUNDY.—Were those reports in writing?

A. Yes, we reported in writing.

Mr. BUNDY.—We object to the evidence, as the

(Testimony of Edward E. Garrett.)

report is the best evidence.

Mr. GORDON.—Have you a copy of those reports here?

A. There is a copy, yes; I didn't report personally.

Q. Is it in those books?

A. I didn't report personally.

Mr. BUNDY.—That is the reason I am objecting to your testifying personally; I want to see what you did report.

A. The report I refer to is quoted in the commissioner's letter of June 6, 1902.

Mr. GORDON.—Your letter was May 9th, was it?

A. Yes.

Mr. BUNDY.—Is that the whole report, do you think?

A. It is in quotation marks there; the signatures are not on.

Mr. BUNDY.—Does it contain the whole report?

A. The purport of the report is all there; that letter was shown to me this morning, I believe, and that is where I saw that; I knew I had seen that report; of course the original report isn't here.

Mr. BUNDY.—The letter-press copy of it would be wouldn't it? A. Yes.

Mr. GORDON.—Counsel for the defense, Mr. Garrett, asked for your report to the Commissioner that you referred to, and I ask you if you have a letter-press copy of that report.

A. Yes, I have in my hand a letter-press copy of the report.

(Testimony of Edward E. Garrett.)

Q. I shall ask you if you sent the original of that report to the Commissioner of the land office the date that the letter is dated.

A. Yes, the original of this was sent to the Commissioner of the General Land Office.

Q. I will ask you to read the letter-press copy of that letter.

A. This is letter on page 330 of receiver's letters to the Commissioner of the General Land Office, from December 7, 1901, to September 6, 1902.

“Boise, Idaho, May 9, 1902.

Hon. Commissioner of the General Land Office,
Washington, D. C.

Sir:

Referring to your letters ‘P’ of April 10th and 22nd, 1902, in the matter of timber and stone entries upon which final proof has been made but no final certificate and receipt issued, in which letters you direct us as to the cases returned: ‘to carefully re-examine same and consider any information bearing on the good or bad faith of the entrymen which may have come to you since date of final proof, and if you are satisfied beyond question that the claimant is acting in good faith, that he made the entry for his own use and benefit, and has not sold or mortgaged the land, you will issue the final certificate in each case on receipt of the purchase money,’ we have the honor to advise that we are not satisfied beyond question that the claimant is acting in good faith and that the entry is made for his own use and bene-

(Testimony of Edward E. Garrett.)

fit. We therefore respectfully ask for further instructions.

Very respectfully,

(Signed)

JAMES KING,

Register.

EDWARD E. GARRETT,

Receiver."

Q. And that letter referred to the entries referred to in the letters from the Commissioner, or attached to the letters to you from the Commissioner, dated April 10th and April 22nd, respectively, did it?
A. Yes.

Q. Now will you state why you wrote that letter that you have just read?

Mr. BUNDY.—We object to that as incompetent, irrelevant and immaterial.

A. Well, after these proofs had been made, during the fall of 1901, up till sometime in the spring of 1902, from the location of the land, the fact that there was no market or demand locally for the timber, or no way of getting timber to the market in a great many cases, and knowing some of the entrymen and their financial condition, the fact that they couldn't, we was convinced that they couldn't or wouldn't make such investments of their own motion and for their own benefit, we were satisfied that there was a nigger in the woodpile and something wrong with these entries, and we had asked that they be investigated in the field; during the time that this correspondence was being had, a special agent was sent here and some investigations were made.

(Testimony of Edward E. Garrett.)

Q. Who was the agent?

A. Louis L. Sharp was the agent who came, in response to that demand.

Q. Did he report to you?

A. Well, he came to the land office; he didn't report directly to us; he did come to the office and report, however, yes.

Q. And a number of those entries or final proofs were held up and are held up as yet?

A. The instructions of the Commissioner of June 6, 1902, were that, unless we had something of a definite nature against an entry, we were instructed to issue the final certificates and receipt. By that time the special agent had made some investigations and we had information that we considered sufficient to base our refusal to issue the final certificates or receipts on something like a dozen cases.

Q. Can you name those dozen cases?

A. Some of them.

Q. Name them, please.

A. There was the Anderson—

Q. Name them by their full name.

A. Arthur Anderson, Abel E. Hunter, Harvey H. Wells, Albert P. Nugent, James T. Ball, John I. Wells, Jennie E. Wells, two Granger entries, Mr. and Mrs. Granger—I forget their given names—Oral Dye; that is all that I remember. I think they were all included in those entries that we held up at that time.

Q. Was that of a man by the name of Henry F. Benedict held up?

A. I am not sure.

(Testimony of Edward E. Garrett.)

Q. Gustave A. Rothine?

A. I don't remember.

Mr. BUNDY.—Your answer to Mr. Gordon's question puts you on record as testifying that the entries of John I. Wells, and Mrs. Wells, Granger and wife, Oral Dye, had never been passed on. Is that what you mean to testify?

A. I say I am not positive as to those. As I remember them, they were among about a dozen that we refused to issue final receipts on; I am not positive as to all of those; in some of the cases, I am.

Q. In the five cases that went to the Interior, the final receipt—

A. Some others they were not issued upon then, and have not yet been issued upon, besides those five.

Q. None that you have named.

A. It is possible that some of those I have named were later, a long time after they issued, but they were held up at that time, held up at the time the letter of June 6, 1902, was received.

Mr. GORDON.—Q. I show you letter dated June 6, 1902, initialed A. W. S., addressed to the Register and Receiver, Boise, Idaho, signed Binger Herman, Commissioner, approved Thomas Ryan, acting secretary, and ask you if you received that letter? A. Yes.

Q. And is that a letter from Binger Herman?

A. Yes.

Q. I will ask you to read that letter into the record.

(Testimony of Edward E. Garrett.)

A. "Department of the Interior,
General Land Office, Washington, D. C.

June 6, 1902.

Register and Receiver,
Boise, Idaho.

Gentlemen: By my letters 'P' of April 10th and 22nd, 1902, I returned to your office one hundred and twenty-five final proofs in timber and stone entries on which no final certificates had been issued, with instructions to re-examine same, and if you are satisfied 'beyond question' that the claimant in each case is acting in good faith, that he made the entry for his own exclusive use and benefit, and has not sold or mortgaged the land, to issue the final certificate on receipt of the purchase money.

I am in receipt of your letter of May 9, 1902, referring to my said letters, and stating: 'We have the honor to advise you that we are not satisfied beyond question that the claimant is acting in good faith and that the entry is made for his own use and benefit. We therefore ask for further instructions.' You are advised that it is the duty of Registers and Receivers to consider and pass upon all final proofs made at their respective offices, unless otherwise instructed.

I realize the fact that in the examination of timber and stone final proofs, the local officers cannot, in all cases, be convinced beyond the shadow of a suspicion of the bona fides of the claimant, and you will not, therefore, suspend a final proof where the necessary cross-examinations have been made and

(Testimony of Edward E. Garrett.)

other instructions of this office relative to taking final proofs been complied with, and everything appears regular and correct on the face of the proof, unless you have good and substantial grounds to believe that the entry should not be approved, when you will refer the case to the special agent on duty nearest to your office for investigation, stating your reason for desiring an investigation of the entry.

Your attention is called to circular letter P, of May 14, 1895, relative to the taking of final proofs, which is still in force.

You are accordingly directed to proceed at once with the examination of all timber and stone final proofs in your office, in accordance with the foregoing, so as to avoid further delays in approvals, and to refer such of them as to which there exist good and substantial reasons for investigation to special agents, for early action.

You will withhold certificate in all cases referred to the special agent for investigation, and forward all the papers in the case to this office for consideration and action, together with such report as the facts in each case may warrant.

Very respectfully,

(Signed) BINGER HERMAN,
Commissioner."

This is a division P letter, initialed A. W. S., and O.K.'d by W. D. H.

Q. And do I understand that you had held up the issuing of the certificate in all entries referred to in the letters of the Commissioner of the Gen-

(Testimony of Edward E. Garrett.)

eral Land Office of April 10th and April 22d, 1902, until the receipt by you of this letter you have just read, of June 6, 1902?

A. Yes, with one exception, John J. Keane; his entry was allowed along about the first of May, I think; the others were all held up until after this letter of June 6, 1902, was received, and under that letter of June 6, 1902, I issued no final receipts, or no final certificates were issued until we had called in the entrymen and acquired a non-alienation affidavit from them, that is, an affidavit that they hadn't sold or transferred.

Q. About the time you received any of these three letters, did any of the persons interested in any of the claims mentioned therein call at the office to see about their claims?

A. Yes, a few of the entrymen did, and other parties for them.

Q. Did any attorney appear at your office with reference to these matters?

A. Yes.

Q. Who was it?

Mr. BUNDY.—I object to it as incompetent, irrelevant, and immaterial.

A. E. J. Dockery, an attorney, called with reference to these entries.

Q. Name one or all of them?

A. To the Boise Basin entries particularly.

Q. What did he have to say about it??

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and as asking the witness to testify to hearsay evidence.

(Testimony of Edward E. Garrett.)

A. Along about the 1st of May, first part of May, he called at the office, stating that he had been in Washington, D. C., with reference, as attorney, I think, for these entrymen, and also attorney for the State in connection with the State lands, and in the course of his conversation with me at that time he stated that he had taken these matters up with the Department, with the General Land Office rather, and he asked me if we hadn't received instructions to issue the final receipt and certificate; there was some conversation in that respect, and I believe he asked if we hadn't been ordered to issue them, and I told him no, we had not been ordered to issue them, and he called again regarding it.

Q. How long after that?

A. Shortly, I think the same afternoon or the next morning, and asked the same question, if we hadn't been ordered, and I told him no, and he said he knew that we had, and demanded—he knew that we had; I told him no, we hadn't received any orders, but there had been some correspondence regarding it, and he demanded to see that correspondence. I refused to allow him to see it, told him then that we did not know him as attorney in the cases, that he was a stranger to the record. He then left, and later came in with a batch of authorities signed by a number of these entrymen for lands in the Boise Basin, and then demanded on their behalf that he be allowed to see this correspondence, and I refused to allow him to see it. The next party that called in that respect, that I remember now,

(Testimony of Edward E. Garrett.)

was George M. Parsons, shortly after that he called to see me personally; he was a personal friend.

Q. Was he an attorney?

A. He was an attorney, and said that he was representing—

Mr. BUNDY.—I object to what Parsons said, as incompetent, irrelevant and immaterial, and hearsay evidence.

A. (Continuing.) That he represented the interests involved in these entries, and said that he understood that I was holding them up, and suggested that I would get into trouble if I persisted in that action, and showed me a letter from Washington, purporting to convey information that the Commissioner of the General Land Office would take drastic action against me if I stood in the way any further, and I told him that I would take my chances with the Department, that they could crack their whips, or something to that effect.

Mr. GORDON.—Q. By whom was that letter signed, Mr. Garrett, that Mr. Parsons showed you?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and hearsay. The letter itself is the best evidence.

A. The letter was signed by Fred T. Dubois. He stated that he had had an interview with Binger Herman, Commissioner of the General Land Office, and Herman had made these statements regarding my refusal to take action.

Q. Mr. Fred T. Dubois, then United States senator from the State of Idaho? A. Yes.

(Testimony of Edward E. Garrett.)

Q. Were these conversations with Mr. Dockery and Mr. Parsons that you have related, and these visits that they made you, after the letter of June 6, 1902, or prior to that time?

A. Before that time.

Q. Do you know whether it was before or after the letter to you of April 22d, that has been referred to here?

A. It was after April 22, 1902.

Q. Then after the instructions contained in the letter of June 6, 1902, that you have read here, did you issue final receipts on the entries referred to in the letters that you have read?

A. Yes, the bulk of them, yes, so that during, I think, some in June and July, and following along then, we issued them as we examined them and called the entrymen in, and they surrendered the temporary receipt for moneys they had deposited; we issued the final papers then, excepting, I guess, about a dozen that I have mentioned; there were about a dozen that weren't passed.

Q. Mr. Garrett, you presided at the hearing of the contest cases in the local land office of Anderson, Ball, Nugent, Wells, and Hunter, did you not?

A. Yes. As I said, there was no hearing in the Nugent case; that was a default, ex parte.

Q. Then, as I understand, after that hearing, you made a report to the Department or the Commissioner of the General Land Office, and held that those entries should be cancelled on the ground of fraud, did you? A. Yes.

(Testimony of Edward E. Garrett.)

Q. Do you know the date of your decision in that matter?

A. I don't recall the exact date, no.

Q. I hand you paper dated April 9, 1904, and ask you if that is the report that you made to the Department on those cases, after the hearing?

A. This is the report or decision in the case against Arthur Anderson, involving his timber and stone entry number 226.

Q. I will ask you whether or not there was a stipulation made in the Anderson case that the evidence in that case and the rulings in that case should be binding upon the contestants in the other three cases I have mentioned.

Mr. BUNDY.—My God, man, you have proved that three times, and have got the record in evidence, and now you are asking Mr. Garrett about it.

A. The stipulation was as to the consolidation of the other cases against Ball, Harvey H. Wells and Hunter, and the stipulation in those cases was that the testimony that had been taken in the Anderson case should, in so far as it was applicable to these cases, be considered in the consolidated cases.

Mr. BUNDY.—I object to it as incompetent, irrelevant and immaterial, and not the best evidence, and ask that the answer be stricken out.

Mr. GORDON.—An appeal was taken in those cases to the Commissioner of the General Land Office, was it not? A. Yes.

Q. And I will ask you if you know the signature

(Testimony of Edward E. Garrett.)
of Louis L. Sharp when you see it?

A. I think I do.

Q. You have seen him write it?

A. I have.

Q. And of Milton G. Cage? A. Yes.

Q. I show you notice of appeal in the case of James T. Ball, dated December 6, 1904, signed Harry S. Worthman and Frank Martin, attorneys for the defendant Ball, and an acceptance of that, or an admission of the service of that, by one Louis L. Sharp and Milton G. Cage, attorneys for the United States, and ask you whether or not they are the signatures of the gentlemen whose names I have read?

A. It is the signature of Louis L. Sharp and also the signature of Milton G. Cage.

Mr. BUNDY.—We will stipulate that Garret beat them, and that they took an appeal and took another appeal; we will stipulate that they took an appeal to the Commissioner.

Mr. GORDON.—I will ask you if they are the signatures of Harry S. Worthman and Frank Martin, attorneys for the defendant Ball.

A. It is the signature of Frank Martin; it is not the signature of Harry S. Worthman.

Q. Are they both written by the same person?

A. Yes, I should say that the name Harry S. Worthman is written by Martin.

Mr. GORDON.—We offer in evidence notice of appeal and admission of services that has just been

(Testimony of Edward E. Garrett.)

identified by the witness Garrett.

(Marked Plaintiff's Exhibit No. 146A.)

Mr. GORDON.—Mr. Bundy, in the early part of this proceeding in the taking of the testimony when, I think, Mr. Worthman was on the stand, we offered in evidence a copy of an agreement, dated February 10, 1902, entered into between Frank Steunenberg and William Sweet. At that time there was an objection made by you on the ground that it wasn't the original, and counsel for the Government then stated that they would undertake to produce the original. I have the original here, and unless you stipulate that it is the original and signed by Sweet and Steunenberg, I shall have to proceed to prove it.

Mr. BUNDY.—You had better proceed to prove it. I don't know what it is. You had better let me see it.

Mr. GORDON.—I told you it was a copy of the agreement that you objected to.

Mr. BUNDY.—The agreement I had was one that wasn't signed.

Mr. GORDON.—I say we offered a copy, and this is the original of that.

Mr. BUNDY.—This is the one he said was cancelled, isn't it?

Mr. GORDON.—I don't remember what he said about it.

Mr. BUNDY.—Is this the one he said was cancelled and another one made?

Mr. GORDON.—No, I didn't know anything about

(Testimony of Edward E. Garrett.)

it being cancelled; as I say, I don't know what he said about it; I know that this is the original of the one we offered; I got it from the files of the clerk.

Mr. BUNDY.—I will stipulate that those are the signatures of Sweet and Steunenberg, but I am not stipulating that that contract was made or entered into.

Mr. GORDON.—That is all that anybody could testify to, that they are the signatures of Frank Steunenberg and William Sweet, to contract dated February 10, 1902.

Mr. BUNDY.—Where did you get it?

Mr. GORDON.—It came from the files of the clerk's office; it is Exhibit No. 58 in the Borah trial.

Mr. BUNDY.—You don't know where it came from, or who produced it, or anything of that kind?

Mr. GORDON.—No.

Mr. BUNDY.—You just want to offer a piece of paper here, and want me to admit that it is Sweet's and Steunenberg's signatures?

Mr. GORDON.—Yes.

Mr. BUNDY.—All right; I will do that.

Mr. GORDON.—We offer it in evidence.

(Marked Plaintiff's Exhibit No. 146B.)

Mr. BUNDY.—I think you had better put down that the paper offered and received in evidence is the original from which copy was made which was exhibited to the witness Worthman when on the stand, and about which he testified.

Mr. GORDON.—Mr. Garrett, I show you a brief of the argument in the case of United States vs.

(Testimony of Edward E. Garrett.)

James T. Ball, involving timber and stone filing No. 228, entitled "Before the Honorable Secretary of the Interior," signed Harry S. Worthman and Frank Martin, attorneys for defendant, and due notice thereof admitted by Milton G. Cage, of counsel for the United States, January 31, 1905, and I will ask you to look at that paper and tell us whether or not the signatures of Mr. Worthman, Mr. Martin, and Mr. Cage, thereto attached, are in the handwriting of the gentlemen named.

A. The name Harry S. Worthman is not in the writing of Harry S. Worthman; it is the signature of Frank Martin, and also of Mr. Milton G. Cage.

Q. I will ask you if that was filed in the land office at Boise. A. Yes, it was filed.

Q. What date?

A. January 31, 1905, by myself.

Q. Filed by you on that date? A. Yes.

Q. I will ask you in whose handwriting Mr. Harry S. Worthman's name is there, if you know?

A. I should judge it was in the handwriting of Frank Martin.

Mr. GORDON.—We offer in evidence the paper just identified by Mr. Garrett.

(Marked Plaintiff's Exhibit No. 146C.)

Mr. BUNDY.—We object to all this as incompetent, irrelevant and immaterial; it doesn't involve any land embraced in the issues in this case at all, or any entry under which defendants claim.

(Testimony of Edward E. Garrett.)

Stipulation [Re Survey of Township 6-4].

It is hereby stipulated, in open court, that township 6-4 was surveyed between September 28th and November 12th, 1901; that the plat of the survey was approved by the Surveyor General, Joseph Perrault, July 28, 1902; that the plat was filed in the United States Land Office at Boise, on July 15, 1905, having been received in the United States Land Office at Boise, Idaho, on March 4, 1903.

Mr. GORDON.—Mr. Garrett, do you know one G. D. Hoseley? A. Yes.

Q. When did you first meet him?

A. Why, I don't recall exactly; I think it was in the fall of 1903, to the best of my memory.

Q. I show you book marked Plaintiff's Exhibit No. 141A, and ask you when you first saw that book?

A. In the spring of 1907, March or April.

Q. Mr. Garrett, where did you first see it?

A. Here in the Federal Building, in an adjoining room.

Q. In your office?

A. No, it was in the special agent's room, the room used at that time by the special agent of the General Land Office.

Q. Who had the book?

A. Mr. G. D. Hoseley handed the book to me at that time, the first time I saw it.

Q. What did he say it was?

Mr. BUNDY.—We object to it as incompetent, irrelevant, immaterial, and hearsay, and attempting to impeach their own witness, Hoseley.

(Testimony of Edward E. Garrett.)

A. He said it was a plat-book given to him by Mr. Barber, of the Barber Lumber Company, in Wisconsin, at the time he was employed to come here by Mr. Barber, or the Barber Lumber Company, in the fall of 1903, I believe, and he said "This will *will* show that, will clear me of any connection with these matters," or something to that effect.

Q. Did he say that Mr. Barber said that?

A. No, Mr. Hoseley said, "This book will clear me, Hoseley," Mr. Hoseley said, "This book will clear me, Hoseley, of any—

Mr. BUNDY.—I didn't know but what you was getting out on the strength of the book.

The WITNESS.—I am not at all worried.

Mr. GORDON.—Did you have another talk with him about that time, with reference to what the marks in that book indicated to him?

A. At that time he further said—we examined the book; he showed the book to me, and right then, or immediately afterwards, in an adjoining room, he explained that the markings in red, the red markings in ink, and the colorings, shadings around the edges of the land, was in the book when it was handed to him, that he had used it as a field-book. Immediately after giving the book to me he made a statement concerning it to a stenographer, in my presence, and in the presence of Mr. Goodwin, a special agent of the General Land Office, and he then made a statement regarding the book, and was examined regarding the markings.

Q. What did he say—what those red marks that

(Testimony of Edward E. Garrett.)

were in the book when it was given to him indicated to him?

Mr. BUNDY.—I object as incompetent, irrelevant, immaterial, and hearsay.

A. When the book was handed to him those markings showed the holdings, the lands, claimed by the Barber Lumber Company, and that Mr. Barber, when he handed him the book, made that statement to him, and that he had used the book as a field-book when he came here, and had kept it since that time, till the time he turned it over to me.

Mr. GORDON.—I will ask you whether or not Mr. Hoseley, on that occasion, told you that the dots in red ink, on page 7 of the book, headed township 6 north of range 4 east, were in the book when it was handed to him by Mr. James T. Barber, at Eau Claire, Wisconsin.

Mr. BUNDY.—I object to it as incompetent, irrelevant, immaterial, hearsay, and an attempt to impeach their own witness, no proper foundation having been laid for impeaching evidence.

A. All the red ink markings, he stated, were in the book when it was handed to him.

Mr. GORDON.—Did any of the attorneys of the Barber Lumber Company ever call on you with reference to any of the claims that had been held up, or contests that had been had in the land office?

A. Yes.

Q. Who was it? A. Senator Borah.

Q. Senator William E. Borah?

A. Senator William E. Borah.

(Testimony of Edward E. Garrett.)

Q. Did he come to your office or did he go to your house?

A. Just prior to those hearings in December, 1903, a short time before that, he called at my house, and asked me concerning those hearings.

Q. Now state what he said.

Mr. BUNDY.—We object to it as incompetent, irrelevant, and immaterial.

A. These hearings had then been ordered, were coming up for trial soon, and he sought information as to whether they would be prosecuted or not; I don't remember the exact words. He asked concerning these hearings, and sought information concerning them, and I refused to give him any, and told him that all I could tell him was that he had best keep his hands off of them.

Mr. GORDON.—Q. And did I understand you to say that he called at your home?

A. He called at my residence one evening.

Q. Had he ever been there before? A. No.

Q. Has he been there since?

A. I don't ever recall of him calling on me at my residence since.

Q. And was the land office open, and you at your office, on the day on which he called? A. Yes.

Cross-examination.

(By Mr. BUNDY.)

Q. What did you mean when you told Senator Borah he had better keep his hands off?

A. I meant just what I said.

Q. What did you mean?

(Testimony of Edward E. Garrett.)

A. Well, I knew that these cases, these entries were irregular; I was convinced of that; I had seen evidence that convinced me of it, and my advice to him was to keep out of them.

Q. That was a few days before you had the hearings?
A. A short time before.

Q. And then you went on as judge, sitting as a fair and impartial judge, and heard these cases?

A. I sat as receiver of the land office.

Q. Your mind was made up that they were wrong before you sat?

A. I was convinced that those entries were wrong.

Q. And you sat there for three weeks hearing evidence, when you knew all the time how you was going to decide them?

A. I sat there and presided at those cases and proposed to perform my duty.

Q. That was the way you conducted the land office all the time, wasn't it?

A. I performed my duty, or tried to, yes.

Q. You decided first, and sat there and heard evidence and then decided as you originally intended to?

A. I might have had ideas regarding cases before they were tried sometimes, yes.

Q. Mr. Garrett, were you one of the men who filed in the proper office, or the land office of this State, the plat of survey for a railroad up in the Boise Basin?

A. I was connected with the railroad company

(Testimony of Edward E. Garrett.)

that filed a plat for a survey up in the Boise Basin, yes.

Q. Who else was connected with that railroad besides you?

A. Mr. Beggs, Mr. Pinney, Mr. Ruick, and Mr. D. O. Stevenson.

Q. You were one of the original incorporators, were you not?

A. Yes, all those I mentioned were.

Q. And the purpose of that railroad was to get up in this Basin, and, among other things, to bring this timber down?

A. No, that timber was not, as I understood at that time, one of the objects of that railroad, no.

Q. Was it at any time one of the objects of that railroad?

A. I think later it was considered in connection with the railroad, that it would furnish freight for the railroad.

Q. And didn't you and your company take up negotiations with the Barber Lumber Company with reference to having them join you in the building of the railroad, for the purpose of getting their timber out?

A. I never took up any negotiations with the Barber Lumber Company, or anyone.

Q. I asked you if your company didn't?

A. You asked me if I didn't; I took no part with the company in such negotiations.

Q. Did you know that there were such negotiations?

A. Yes.

(Testimony of Edward E. Garrett.)

Q. And didn't you know that for two years and a half Mr. Ruick was negotiating for the building of that railroad with the Barber Lumber Company?

A. I don't know for what period, but I know he did negotiate.

Q. During all that time did you Mr. Garrett, make one single charge against one single entry of any land that went to the Barber Lumber Company?

A. I certainly did.

Q. Name one, please.

A. The Oral Dye case; in any case I performed my duty.

Q. When was the Oral Dye charge made?

A. In January, 1906.

Q. In January, 1906?

A. In January, 1906, was when I made a report concerning the Oral Dye case.

Q. Don't you know that the Barber Lumber Company never got an acre of land from Oral Dye?

A. I don't know as to that, but I know that the Oral Dye case was one of these cases in the Boise Basin, was one of these fraudulent entries.

Q. I am speaking of the lands that went to the Barber Lumber Company.

A. I don't know as to that.

Q. Do you know when the negotiations of your company with the Barber Lumber Company began?

A. I do not. The negotiations of that company, the negotiations were turned over first, as to the building of that road by the company, to Mr. Beggs and Mr. Ruick; subsequently they were turned over

(Testimony of Edward E. Garrett.)

to Mr. Ruick, and he individually carried those on, and the company had nothing to do with it.

Q. Wasn't he representing the company?

A. He had authority from the company to negotiate from any source he saw fit for the building of that railroad.

Q. Don't you know that from the 1st of January, 1902, up until sometime in June, 1906, those negotiations were carried on by Mr. Ruick?

A. I don't know the dates.

Q. And during all that time you were certifying to the land office that these entries, in your opinion, were made in good faith by the entrymen?

A. I never certified any entry as being made in good faith if I had any information to the contrary, during that time, or any other time.

Q. Well, you didn't get any information until after the Barber Lumber Company finally turned down your railroad proposition, in 1906, and then you became very active, with Mr. Ruick, in indicting the Barber Lumber Company originally, and in starting this civil suit.

A. That is absolutely untrue, sir.

Q. Didn't you take any part in procuring this indictment? A. I performed my duty, sir.

Q. Did you have anything to do with procuring this indictment?

A. If in giving testimony before the Grand Jury I took any part in procuring those indictments; I gave information to the Government officers, and assisted to some extent, yes.

(Testimony of Edward E. Garrett.)

Q. But during the time the railroad negotiations were pending there were several grand juries sat here, weren't there? A. I presume there were.

Q. You didn't hear anything of any indictments then.

A. When Mr. Cozier was district attorney, and one time when he was here at the session of the court and had a Grand Jury, I presented the matter to him and suggested that those entries should be investigated.

Q. And the Grand Jury reported, unofficially, if not officially, that the Barber Lumber Company's entries were perfectly clean?

A. They made no investigation that I know of at all; Mr. Cozier never took up the matter at that time.

Q. But this is true, isn't it, Mr. Garrett, that within a very few months from the time the Barber Lumber Company finally terminated negotiations with your railroad deal, that you and Mr. Ruick became very active in procuring indictments and in starting this civil suit? A. That was not true.

Q. How long was it after that, that you began?

A. I don't know when the negotiations were broken off, if they ever were broken off; I do know, however, how the investigations started. In January, 1906, in the Oral Dye case, I reported to the Commissioner of the General Land Office that it was one of a large number of fraudulent entries, and that there were a number of influential men and large interests involved, and asked that a competent man and a man of judgment be sent to investigate the cases.

(Testimony of Edward E. Garrett.)

Q. That was within two weeks after the negotiations were stopped, Mr. Garrett.

A. That was sometime in 1906. As to whether there were any negotiations then pending, I don't know anything about it. There was no connection between my report to the General Land Office and any railroad proposition whatever, sir.

Q. Well, nobody asked you that question, but I suppose you wanted to make the statement, and I haven't any objection. In all of these cross-examinations you asked the entrymen where they got the money to make final proof with. A. Yes.

Q. And first asked them if they had sold it since making their original entry.

A. Yes, I or my clerk did.

Q. If any entryman had testified that subsequent to making his original entry he had arranged to dispose of that land, you wouldn't have issued final receipt to him, would you? A. No.

Q. Your conception of the law was, at that time, that if a person, subsequent to making his filing, mortgaged the property, or sold it, or agreed to sell it, that constituted a fraudulent entry, wasn't it?

A. Prior to final proof, yes.

Q. If, subsequent to his filing, and before final proof, he mortgaged the land, or agreed to sell it, or had sold it and received an advance payment on it, you would have held such an entry fraudulent?

A. Those would have been reasons for withholding the final proof, among others.

Q. That was your conception of the law?

(Testimony of Edward E. Garrett.)

A. That is true; those were the regulations under which we acted.

Q. That was their construction of the law, and had been since for as long as you knew anything about it? A. That is correct.

Q. And wherever an entryman came in and testified that subsequent to his filing he had mortgaged or sold his property, or had borrowed money with which to make final proof upon the security of the property, then you refused to approve such final proof?

A. If he had made any agreement to sell, or had contracted to sell the land, prior to final proof, and that would appear in the evidence, why we would refuse.

Q. I notice in this letter of June 6, 1902, the Commissioner of the General Land Office advises you to—in one of these letters you were told to issue final receipts, or certificates rather, upon these suspended entries, upon the payment of the purchase price. It is the letter of April 22nd.

A. April 10th is the first letter.

Q. The one I am quoting from is April 22, 1902, in which the Commissioner says, "You will issue the final certificate in each case on receipt of the purchase money." Did the land office know that you had been taking the purchase money right along, Mr. Garrett? A. They did.

Q. How did they find that out?

A. They would find out from my accounts.

Q. Did you ever report that money?

A. I did.

(Testimony of Edward E. Garrett.)

Q. What did he mean by this statement?

A. I don't know what he meant by it except that I should receipt it officially then.

Q. What did you do with that money?

A. Put it in the Government depositary to my credit as receiver of public moneys.

Q. As receiver, or personally?

A. As receiver of public moneys.

Q. Did the Government have that money?

A. The Government depositary had the money, on deposit, to my credit as receiver of public moneys.

Q. Did you get any interest on it?

A. I did not.

Q. Did the Government?

A. Not that I know of.

Q. Didn't you get any interest on any money?

A. I did not.

Q. You had, altogether, something like \$30,000 or \$40,000 tied up?

A. I had at one time something like \$60,000.

Q. Did you get any perquisites at all?

A. I did not.

Q. Did they pay you anything for it?

A. They did not.

Q. Nothing of any kind or character?

A. No, sir.

Q. Directly or indirectly? A. No, sir.

Q. That money was simply taken by you and you issued your own personal receipts, didn't purport to be official?

A. They did; they were signed as receiver; there

(Testimony of Edward E. Garrett.)

was no form provided for them; I issued an acknowledgment of the tender of those moneys and signed the acknowledgment or this receipt as receiver of public moneys. This money was deposited in the Boise City National Bank, which was the Government depositary, and I rendered accounts of those moneys.

Q. Would the land office contain any record of those reports? A. It does.

Q. Will you produce the reports?

A. The reports I reported to the Government are in Washington; the original records of those accounts are in the office, and I can produce them.

Q. I wish you would to-morrow morning, for further cross-examination, produce the accounts.

A. You wish me to produce the record of that?

Q. I want the reports; I want to see how many of them you reported.

A. The reports are in Washington. The copies of the record from which these reports were made are here, yes; I can furnish them.

Q. In each one of these claims where you took the final proof you issued a certificate, did you not, you and your associate in the land office, or a report to the Department, of your view on the bona fides of that claim?

A. Yes, when the proof was made, under that general suspension, we made a report on that case.

Q. Was that at the time it was made or at the time it was approved?

A. That was at the time it was made.

(Testimony of Edward E. Garrett.)

Q. That is, when the money was paid in or deposited? A. Yes.

Q. And final proof tendered? A. Yes.

Q. Then you made a report to the Government?

A. Yes.

Q. Did you do that in each case of the 125 that have been mentioned here in the list?

A. Yes.

Q. And were those reports practically the same?

A. Yes.

Mr. BUNDY.—I asked you to produce some of those; why haven't you produced them, Gordon?

Mr. GORDON.—Go and get them where you can; I don't know where they are; I have never seen them.

Mr. BUNDY.—Those reports you made, are records kept of them here in the land office?

A. There would be no copy kept of that report in the office, no.

Q. None at all? A. No.

Q. Were the original reports sent to Washington? A. Yes.

Q. Were they returned to you with the other final proof papers? A. I think not.

Q. Are you sure of that?

A. I am not positive; I think not.

Q. Were the entire files returned to you?

A. If they were, they would be referred back to Washington.

Q. Can you state the substance of what those certificates were that you made when you accepted

(Testimony of Edward E. Garrett.)

a man's final proof?

A. I think the substance of those reports is quoted in the Commissioner's letter of April 10, 1902.

Q. Some of those are here?

A. But those came back through a different source, and are not files of the local office, for your information.

Mr. KEIGWIN.—Are they the reports approving these entries which went up with the final proof? Is that what you are talking about?

A. Yes.

Mr. KEIGWIN.—Some of those are with the entry papers that have been put in evidence.

Mr. BUNDY.—Not one single solitary one; I have watched it all the way through; I have seen them in a number of instances among the papers, but Mr. Gordon was very careful not to put them in; I noticed them in the Anderson case.

The WITNESS.—There was such a report in each one of those cases during that suspension.

Mr. BUNDY.—It is quoted here by the Commissioner as follows (referring to the report you made): "You have submitted your joint opinion in each case, in which you say substantially that the regulations relative to the method of taking such proofs were carefully followed, that the questions propounded to the claimant and witnesses were explained fully when necessary, that you are satisfied that the answers were made understandingly, that you believe the entryman is making the purchase as

(Testimony of Edward E. Garrett.)

a bona fide investment for himself, and you therefore recommend that the entry be allowed." Now you and Mr. King jointly made such report and such recommendation as to the entire list of 125 timber and stone entries which have been referred to in these letters from the Commissioner, did you not, Mr. Garrett?

A. Yes.

Q. That was at the time when the final proof was first made? A. Yes.

Q. And the time the money was paid in or deposited? A. Yes.

Q. Did you cancel any entries up in the Payette Country? A. Yes.

Q. How many?

A. Oh, three or four or five, I don't remember.

Q. Now, when these people came to the land office to make their filing on this land did you tell them of this suspension order?

A. Yes, they were told that when they got this temporary receipt.

Q. I am speaking now of the time when they made their filing.

A. No, I don't think we did, unless the question was asked.

Q. But at the time you gave them the temporary receipt you did explain it? A. Yes.

Q. Now, after July 6th, when this suspension order, as you call it, was modified by the letter, I notice that you were instructed by the Commissioner as follows: "You will not, therefore, suspend a final

(Testimony of Edward E. Garrett.)

proof where the necessary cross-examinations have been made and other instructions of this office relative to taking final proofs been complied with, and everything appears regular and correct on the face of the proof, unless you have good and substantial grounds to believe that the entry should not be approved." Now, after you got this letter of June 6th, you, within the next few weeks, approved and issued final certificates in all of the 125, except the ten or twelve you have mentioned, did you not?

A. Yes, I think so.

Q. So that as to all except twelve you didn't at that time think that you had any good and substantial grounds to believe that the entry should not be approved?

A. We had nothing definite as to the individual entries in each case.

Q. Were you trying to comply with the order of the Commissioner? A. We, were, yes.

Q. Just please give me an answer yes or not, Mr. Garrett, if you can. As to all the entries where you finally issued the certificate you did not have, or did not consider that you had, any good and substantial ground to believe that the entry should not be approved, did you?

A. No, we had nothing, or otherwise we wouldn't have issued them, nothing of a tangible nature.

Q. This letter further instructed you that in all cases of doubt you were to refer the matter to the nearest special agent. Now how many of this 125 did you refer to any special agent, after June 6,

(Testimony of Edward E. Garrett.)

1902?

A. All of them were considered by the register and myself and the special agent at that time, and these twelve, or about twelve, that I have mentioned were the only ones that anything definite, that there was anything definite against. I think in those cases, most of them were simply a request from the special agent that we withhold final certificate.

Q. Did you refer this to the special agent by report in writing?

A. No, he was in the office right with us, and considered them with us.

Q. The letter says, "You will refer the case to the special agent nearest to your office for investigation, stating your reason for desiring an investigation of the entries." Did you state to Mr. Sharp, or any other special agent, the reason you desired an investigation of any particular entry, and if so, what was it?

A. I presume we did of these dozen we didn't issue; those we issued on we didn't make any such report.

Q. Do you remember writing a letter to Hyatt & Moulton relative to these entries, shortly after June 6th?

A. I don't remember writing him relative to these entries; I remember writing to him.

Q. Don't you recall writing to him, in substance stating to him the departmental order, and that it would be impossible for you to hold them very much longer, withhold the certificates very much longer?

(Testimony of Edward E. Garrett.)

A. No, I don't recall writing him any such letter; I recall having some correspondence with him; he was a local mill man and had made some complaints regarding entries in that locality, and he had been told to get information, or something to that effect; that is as I remember it.

Q. Don't you remember that he was trying to buy up claims? A. No.

Q. And don't you remember that you wrote him a letter to the effect that you couldn't hold up these entries much longer, or words to the effect?

A. I don't recall.

Q. Will you say that you didn't?

A. I say I don't remember writing him any such letter.

Q. I would like to get your evidence one way or the other. Will you swear that you didn't write to Mr. Hyatt, the local millman, up there, after June 6th, when you had received this letter from the Commissioner, telling him, in substance, that you couldn't hold back these final certificates very much longer, and that he would have to get busy if he was going to buy it?

Mr. KEIGWIN.—We will ask the Examiner to instruct the witness that he needn't answer it unless Mr. Bundy produces the letter.

A. I may have written him about the entries, but as to giving him an opportunity to purchase them, I never had any such idea.

Mr. BUNDY.—Q. Didn't you write him and tell him you couldn't withhold those final certificates

(Testimony of Edward E. Garrett.)

very much longer?

A. I might have; I don't know; I don't remember.

Mr. KEIGWIN.—Counsel for the complainant request Mr. Bundy to produce that letter.

Mr. BUNDY.—I will produce it when I get ready to put it in evidence.

Q. In your letter of May 9, 1902, you wrote to the Commissioner, in which you stated that you were not entirely satisfied that the claimant was acting in good faith, referring to the 125 timber and stone entries mentioned, did you make any additional report to him along that line on or about that time?

A. No, I think not; I don't remember any.

Q. Did you specify any particular entrymen in any report, other than the one that is shown you, which doesn't specify?

A. No, not that I remember of.

Q. So that you didn't attempt at that time to point out any particular entries that you had in mind?

A. I don't know as I had at that time any information as to any particular entries.

Q. You testified that you became convinced that there was a nigger in the woodpile, because you didn't know of any market for timber at that time, and because you knew that many of the entrymen were not men of means, and in your opinion were not able to buy a tract of land of that character. Was that the substance of your first suspicions in this matter?

(Testimony of Edward E. Garrett.)

A. My first suspicions in the matter were before that time, and when the Commissioner had special agents in the field prior to the time Mr. Sharp was here; it was their duty, of course, to investigate frauds, and when these cases were reported back, throwing the responsibility on us, I refused to assume that responsibility; I was satisfied that there was something back of that wholesale entry of timber lands.

Q. You attempted to tell Mr. Gordon what it was that created that suspicion; you said that there was no market and the men didn't have money. Was there anything else that made you suspicious?

A. Those were the basic reasons, I think.

Q. What became of these so-called non-alienation affidavits that you mentioned?

A. I think they were attached to the proof.

Q. In all instances? A. Yes.

Q. And left as a file, part of the proof, in that particular case? A. Yes.

Q. And sent with the rest of the papers to Washington? A. Yes.

Mr. BUNDY.—The attorneys for the defendant, on the statement of Mr. Garrett now made, move to strike out all of the timber and stone papers which have been shown to and identified by witnesses, and offered in evidence by the complainant, for the reason that it appears that such records offered are not the complete records, but a part only, and that the files as prepared in the local office have not been offered in evidence, certain papers having been elim-

(Testimony of Edward E. Garrett.)

inated from such files before the same were offered in evidence.

Mr. KEIGWIN.—Do you understand that we have ever undertaken to offer all the papers connected with any entry?

Mr. BUNDY.—I don't know of any papers connected with it, but all that would be termed a part of the proof papers.

Mr. KEIGWIN.—We have always carefully identified and specified the papers we put in evidence.

Mr. BUNDY.—These non-alienation affidavits were made a part of the proof papers, were they not?

The WITNESS.—A. These non-alienation affidavits were taken long after the proofs were offered.

Q. But you wouldn't have issued except for that?

A. I wouldn't say positively that they were attached to the proof papers.

Mr. KEIGWIN.—Is this non-alienation affidavit that you speak of a part of the ordinary proof papers? A. No.

Mr. KEIGWIN.—Were these non-alienation affidavits which you mention papers which were taken from the claimant only in cases where there had been a suspension of the proof and were taken at the time you got ready to issue your final certificate?

A. Only in such cases.

Mr. BUNDY.—Q. As I understand your testimony, Mr. Garrett, even after you had this letter of June 6th, throwing it back to you, you then refused to issue any, and didn't issue any, except as you called the entryman in and took from him a non-

(Testimony of Edward E. Garrett.)

alienation affidavit.

A. We called the entryman in and required him to surrender the temporary receipt and file a non-alienation affidavit.

Q. Then as to these 120 suspended entries which have been referred to in the Commissioner's letters, you did not issue a final certificate in any of these cases except you procured from the entryman a non-alienation affidavit?

A. That was my practice, to require that, and it was done in each case.

Q. That was a part of the record upon which you acted in issuing final certificate?

A. This, of course, was on our own motion; it wasn't a part of the regulations; I required that in every instance, and we based our action somewhat on that.

Q. And it was filed with the papers in each particular entry?

A. That is as I remember it, yes.

Q. And those were on file in the land office here, so that if any person came in to look at the record in any timber and stone entry he would have found these non-alienation affidavits, the same as any others? A. It wouldn't have been a file.

Mr. BUNDY.—I now renew my motion to strike out all the final proof papers offered by the plaintiff in this case, for the reason that it appears that they have offered but a part of such final proof papers.

Mr. KEIGWIN.—Counsel for the complainant

(Testimony of Edward E. Garrett.)

tender to Mr. Bundy, and place at his disposal, all of the non-alienation affidavits in all the cases in which such affidavits were taken, and will make no objection if he wishes to offer them in evidence himself.

Mr. BUNDY.—Produce them; get them here to-morrow morning.

Mr. KEIGWIN.—Let the record show, please, that in response to Mr. Bundy's polite request, counsel for the complainant, not to be outdone in politeness, have left the room and have searched the files, and produced one of these papers, now put in.

Mr. BUNDY.—I show you paper marked 146D. Is that signed by you, Mr. Garrett?

A. Yes.

Q. Was that one of the reports which you made to the Government at the time that you accepted the money and issued the temporary receipt in the timber and stone entry of Abrams? A. Yes.

Q. Were the other reports that you made of similar and like import and effect?

A. Yes, similar in form and import and effect, yes.

Q. And such a report or recommendation, if it may be called such, as the one shown you, was made in each one of these suspended entries?

Mr. BUNDY.—We offer this in evidence in connection with Mr. Garrett's cross-examination.

(Marked Exhibit 146D.)

Mr. BUNDY.—Q. Did you and Mr. Hoseley ever have any little deals of your own in the timber busi-

(Testimony of Edward E. Garrett.)

ness around here?

A. Not he and I personally, no.

Q. None at all? A. No.

Q. You have been interested in concerns in which you and Mr. Hoseley were jointly interested, haven't you? A. No.

Q. None at all? A. No, not I directly.

Q. Who was it?

A. I think perhaps Mr. Hoseley had some connection with the sale of my wife's timber and stone entry.

Q. What did he get for it?

A. I don't know as he got anything for it.

Q. What did your wife get for it?

A. She got several thousand dollars, I think \$3,000.

Q. Who did she sell it to?

A. I am not positive, but I think it was to Ridenbaugh, of this place.

Q. Was Mr. Hoseley connected with that business? A. I don't know in what capacity.

Q. Did your wife take a timber and stone claim. She did. Where?

A. In township 5 north, range 4 east.

Q. When? A. 1903, I believe.

Q. At the time in the so-called sweat-box, when you and Mr. Hoseley were looking over this book, which has been marked Plaintiff's Exhibit 141A, Mr. Hoseley told you, I believe, that all of the red ink marks and the colored shading around the plats

(Testimony of Edward E. Garrett.)

was in the book when it was handed to him?

A. Yes.

Q. And he told you that it was handed to him some time in September, 1903, did he?

A. Yes, I believe so.

Q. And you was familiar with these townships that were shown in the plat, I suppose?

A. I was, and am yet.

Q. And he told you at that time, I think you testified, that Mr. Barber told him they owned all the lands indicated in this book.

A. That indicated their holdings.

Q. And that indicated to you what they claimed to own? A. Possibly.

Q. You knew that wasn't true, didn't you?

A. I knew that some of those lands indicated in red ink wasn't at that time owned by the Barber Lumber Company, because it was Government land.

Q. You knew that the selections hadn't been made in September, 1903? A. Yes.

Q. Did you tell Mr. Hoseley that?

A. I didn't tell him that.

Q. Did Mr. Ruick tell him that?

A. I don't know what Mr. Ruick told him.

Q. Did you call his attention to the fact that he was making a mistake, before he went on the stand? A. I did not.

Q. But you let Mr. Hoseley go on the stand in the Borah trial and testify that all of the red marks were in this book when it was given to him, when you knew that wasn't true?

(Testimony of Edward E. Garrett.)

A. I knew that those markings indicated lands that in September, 1903, were Government lands.

Q. And you knew, Mr. Garrett, that those Government lands were entered by scrip, didn't you, afterwards?

A. Yes, some of those lands were entered with scrip after the time that book was handed to him.

Q. And you knew that? A. Yes.

Q. And you know how they were entered and the time they were entered? A. Yes.

Q. And so you knew that what Mr. Hoseley testified to was either a falsehood or he was mistaken?

A. I did not.

Q. And you let him go on and testify?

A. I didn't know that Mr. Hoseley's statement was a falsehood, and I don't think it was.

Q. And you knew that he was mistaken.

A. I do not know that he was mistaken, and on the contrary I believe he was not mistaken.

Q. Mr. Garrett, can you tell me how anybody in Eau Claire, in September, could mark off lands that they owned, that hadn't been entered by scrip at all? A. Yes.

Q. Tell me please.

A. By having them cruised prior to that time.

Q. Did you conceive that cruising lands was ownership of them?

A. No; those lands might have been indicated by having those lands cruised prior to that time.

Q. Did Mr. Hoseley say to you that Mr. Barber gave him this book and told him that the lands

(Testimony of Edward E. Garrett.)

marked with red indicated lands that they had cruised? A. No.

Q. Isn't that what he did tell him?

A. I don't know what he told him.

Q. Isn't that what Hoseley told you he told him?

A. No.

Q. Isn't it a fact that Mr. Hoseley said that Mr. Barber said that red indicated land they owned or lands they had cruised?

A. As I remember, he said the red ink markings indicated the Barber holdings.

Q. What did you think they indicated?

A. Lands that they claimed; I don't know what they were intended to, but I understood that they were lands they claimed; at least that is what he told me.

Q. But you knew that the land marked in red ink in 6-9, 7-9, and 8-7, at that time was Government land?

A. I don't know as to those particular townships you name; I know that some of the lands indicated in red ink were not, in September, 1903, private holdings; I knew they were Government lands.

Q. But you thought maybe Mr. Barber had marked them because he had cruised them?

A. I don't know what I thought at that time; I say they could have been indicated from cruising, at that time.

Q. But Mr. Hoseley told you, according to your testimony that when this book was handed to him, the red ink marks indicated lands, and that Mr. Bar-

(Testimony of Edward E. Garrett.)

ber told him that they were the Barber Lumber Company's holdings.

A. That is what Mr. Hoseley told me.

Q. And you at that time knew that that wasn't true?

A. I knew that the Barber Lumber Company could not, in September, 1903, have owned all those lands indicated in red ink.

Q. Did you know that Mr. Hoseley himself had made a timber and stone entry? A. Yes.

Q. And did you know that in this book that was indicated in red ink?

A. Yes, we discussed that; I asked him regarding it.

Q. And did you think that was owned by the Barber Lumber Company in September, 1903?

A. No, I think he made his entry after that time.

Q. And yet it was here in red ink?

A. Yes.

Q. And so you knew he hadn't entered it and the Barber Lumber Company couldn't have owned it?

A. They couldn't have owned it at that time.

Q. You are, or were at that time, a friend of Mr. Hoseley's, aren't you? -

A. I am, and was at that time.

Q. And when you was in the sweat-box with Mr. Ruick getting this information from Mr. Hoseley you didn't call his attention to any of these things you knew about, did you?

A. Mr. Ruick wasn't present at that time, and the matter of these lands, of lands being indicated

(Testimony of Edward E. Garrett.)

in red ink being Government lands at the time the book was handed to him, was discussed with Mr. Hoseley; I called his attention to that.

Q. You said to him, "Mr. Hoseley, these lands are Government lands?"

A. His entry was pointed out and some others, and the difference in the markings, some of them being checks, and some lines, and some dots, were discussed.

Q. Did you call his attention to the things you have told me about, that you knew that these lands could not have been in private ownership at that time? A. Some of them.

Q. You knew that Mr. Hoseley was going on the stand and testify to facts that you knew couldn't be true?

A. I didn't know anything of the kind.

Q. Don't you know that during the time that Mr. Hoseley was carrying this book, which I think was from sometime in September, 1903, until sometime in the middle of the summer of the following year, that the office of the Barber Lumber Company, through Mr. Lyon Cobb and others, were going to the land office from time to time and keeping track of lands that were being entered and lands on which final proof was being made?

A. I don't remember the dates that the representatives of the Barber Lumber Company did examine the records of the land office, but they did, yes, from time to time.

Q. Among others, Mr. Lyon Cobb and Mr. Chap-

(Testimony of Edward E. Garrett.)

man?

A. I think they used to examine the records; yes, but whether they were checking up the way you state I couldn't testify.

Q. This conversation with Mr. Borah, you have told it all, have you?

A. Yes, as I remember, the substance of it.

Q. Now, Mr. Garrett, without any specific instructions from the land department, it was your duty, as receiver of the land office, to protect the Government, I suppose against all kinds of impositions, was it not?

A. It was.

Q. And during your incumbency of that office you attempted to perform your duty in that regard, I suppose?

A. I did.

Q. And when men made final proof to you that was not sufficient under the statute, you suspended or refused final proof, did you not?

A. Yes.

Q. Were all of the final proof papers and filing papers, at some stage in the proceedings, subject to your inspection or approval?

A. Yes.

Q. Were the papers made by the several entrymen upon their face proper and regular in form, so far as you know?

A. All those that were allowed, yes.

Q. All those where final certificate ever issued?

A. Yes.

Q. Upon their face showed a valid proper filing and valid and proper final proof?

A. Yes.

Q. So that any person who had occasion to examine the records of the land office would not have

(Testimony of Edward E. Garrett.)

found anything suspicious about any of these entries which you finally allowed, and for which final certificates were issued?

A. Those that were passed, and final certificate issued, there would be nothing indicated against them in the records of the land office, no.

Q. One thing I think we ought to get on record here, Mr. Garrett, for the benefit of these gentlemen—maybe they know it, but I am not very clear on it myself—this scrip comes in a certain number of acres, in a block, does it not; that is, if you have a 1600 acre piece you have to locate it all at the same time, do you not?

A. The selection must cover the base, yes.

Q. What I mean is, you couldn't go and locate 400 acres on a 1600 piece of scrip; you would have to locate it all at once, would you not?

A. If you are referring to forest reserve lieu scrip, yes.

Q. There are two kinds of Northern Pacific scrip; how is it with reference to that?

A. Northern Pacific issue that scrip in any size piece you want.

Q. But when you have it issued in a certain piece, the selections must be together?

A. With the Northern Pacific scrip you give the railroad company the description of the land you desire to select, and they designate a basis to cover that selection.

Q. In all of this scrip, the land has to be contiguous, does it not? A. No.

(Testimony of Edward E. Garrett.)

Q. Is that so with the forest reserve lieu scrip?

A. That would be true, yes, as to the forest reserve selections.

Q. So that if a person had a 500 acre piece of scrip, he would have to have 500 acres all in a body?

A. No, that is not correct; if you had a 500 acre piece, you might select 500 acres scattered all over the district.

Q. But you couldn't select 400 acres and keep the other 100?

A. No; but the Northern Pacific selections are not made in that way though; the land you desire to select is designated to the company, and then they issue their selection list and the basis for that selection.

Q. A great deal of this scrip, Northern Pacific scrip, is issued and held for a long time before it is laid, isn't it? A. No.

Q. The Barber Lumber Company had 6,000 acres of it here a year and a half before it was laid?

A. They might have had the selection list and the basis list and held it without filing for some time, but I never saw any Northern Pacific scrip that was handled in that manner; I have handled a great deal of it.

Q. Is a line-up before a land office a very unusual thing in this country, Mr. Garrett?

A. Well, it is rather unusual in this district; there have been a few of them in my experience.

Q. It isn't anything unusual for people to stand in line in land offices a week or ten days, is it?

(Testimony of Edward E. Garrett.)

A. That has occurred, but not at this office; we have had very few line-ups at this office.

Q. At La Grande, Oregon, a year or two ago, they stood in line sixteen days; did you hear of that?

A. Yes, I have heard of that.

Q. I have seen them in Wisconsin longer than that. Were there very many timber and stone entries made in this office prior to 1901?

A. Very few.

Q. The townships up in what we call the Basin were, I suppose, opened to entry at different times, were they?

A. Yes, the townships in the Basin were surveyed prior to that time, yes, most of them.

Q. Can you tell us approximately—I don't care for the exact date—when the Basin towns, other than 6-4, were opened to entry under the timber and stone act?

A. Some of them were open way back thirty or forty years.

Q. I meant those that are involved in this litigation?

A. Some of those involved in this litigation were opened thirty or forty years, 7 north, 4 east, and 6 north, 5 east.

Q. What towns in the Basin were newly opened to entry in the year 1901?

A. There was no township just open for entry in 1901; there were no towns that were open at that time that hadn't been open for some time.

Q. Then the Crooked River country was opened

(Testimony of Edward E. Garrett.)

to entry a year after, in 1902?

A. Well, the towns in the Crooked River section had been open for some time prior to these filings, several years, I think.

Q. But there hadn't been any filings made up in that country? A. No.

Q. Nor had there been any filings made in the Basin until 1901? A. That is correct.

Q. And none in the Crooked River until 1902?

A. 6-4 was the only township that was opened during the time of these filings.

Q. And that was in 1903?

A. That was in 1903.

Q. Your evidence shows that the survey plat was approved and filed July 15, 1903; it wouldn't have been possible to enter until then?

A. It was open to entry to the State then, and wasn't open to general entry until sixty days expired.

Q. But it wasn't even open to the State until that plat was filed? A. No.

Q. Maybe you could bring in here a book that would contain your reports of these—

A. I can get that in a moment, yes.

Q. Just get it. It will save bringing you back here.

(Witness goes to get book.)

Mr. KEIGWIN.—Mr. Bundy, do you want all the non-alienation affidavits?

Mr. BUNDY.—I haven't asked for them at all; I moved to strike out all the papers; if you want to supply them, you can do so.

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—Q. Mr. Garrett, you said you sold your land, your wife's claim, to some lumber company.

A. I didn't sell it; she sold it.

Q. Who bought the logs off your wife's land?

A. No one; there hadn't been any logs taken off her claim.

Q. You have an uncle? A. Yes, an uncle.

Q. Mr. Childs? A. Yes.

Q. There was a contract made through Mr. Hoseley and the Barber Lumber Company for the purchase of the logs on your wife's land and your uncle's land.

A. Yes, he entered into a contract to take the logs off of his claim and her claim; he had a contract to take the logs off of her claim, but it was afterwards cancelled, and there wasn't any logs taken off of her claim, and she sold her claim to other parties.

At this time adjournment was taken until ten o'clock, A. M., Tuesday, March 9th, 1909, at which time, pursuant to adjournment, court met, the Examiner and counsel for the defendants being present.

Mr. BUNDY.—I wish you would note, Mr. Reporter, that the attorneys for the defendant, the examiner, and the reporter have been in attendance since ten o'clock, and that the attorneys for the Government appeared at 10:35, for the purpose of beginning this examination. I want also to make a statement upon the record to this effect. Some talk has been had between counsel for the Government and counsel for the defendant with reference to certain

stipulations with reference to rebuttal evidence, taking the testimony of witnesses at various places, and other matters. It has been the disposition and intention of the attorneys for the defense to do everything possible by way of stipulation to facilitate and expedite the taking of evidence in this case, and the attorneys for the defendant are convinced that nothing is being gained by that course, that no attempt is being made by the Government to expedite the taking of this evidence, and counsel for the defendant now announce that they will stipulate nothing with reference to rebuttal testimony, nor any other matter to which reference has been made by counsel heretofore. We will leave it to the Government to take its own course and prove its own case in its own manner, the defendant reserving the right to except to the introduction of any evidence not taken in strict accordance with the statutes and the rules of court, and not waiving the right to object to any evidence in rebuttal which is not strictly in rebuttal. This is intended to embrace the introduction of alleged statements made by witnesses before the district attorney, special agents, and others, which have been referred to by various witnesses when on the stand, and we insist that if these statements are to be offered in evidence they should be offered in evidence as a part of the plaintiff's case, at this time.

Mr. KEIGWIN.—We accept the rebuke.

Mr. BUNDY.—One other thing I want to call your attention to: Have you presented the order to Judge Dietrich to be signed? Has it been signed?

Mr. KEIGWIN.—The parts agreed upon were signed.

Mr. BUNDY.—Have you got a copy of it with you?

Mr. KEIGWIN.—I left it with him.

Mr. GORDON.—It was only with reference to the extension of time, as I understand.

Mr. BUNDY.—I shall apply to the Court either to have inserted in that order, or to make another order, that you take the evidence of any and all witnesses you have at Boise, and at any other place, at the one trip. I don't believe we ought to be called back to any of these cities to take the evidence later; and, in addition, I want to say to you now, inasmuch as it has been referred to in this case, as well as in open court in the criminal case, on the call of the calendar, that we shall ask the Court to hear the criminal case when court convenes in May, as I understand there is to be a jury in May, and if there is to be no jury in May, then we shall ask that the case be tried at the last jury in attendance at this term.

Mr. KEIGWIN.—Counsel for the complainant having heretofore agreed to certain limitations as to the time of taking testimony in this case, which were imposed in an order signed by the Court on yesterday, and the terms of that limitation having been fixed upon in pursuance of an understanding between counsel that matters of detail which could not conveniently be put in evidence upon the case in chief, and before the departure of counsel from Boise for the purpose of taking testimony elsewhere, I desire to state that the changed attitude this morning an-

(Testimony of Edward E. Garrett.)

nounced by counsel for the defendants will, in all probability, necessitate a considerable protraction of the testimony at Boise, so that it will be necessary to apply for further extension of time for the conclusion of the testimony in this case.

Mr. BUNDY.—We will agree that the order made last night be vacated, and on such new application made, on notice, the defendant will desire to be heard and submit evidence with reference to the conduct of this case in the past, before such new order is made.

[Testimony of Edward E. Garrett, on Behalf of the Complainant (Recalled).]

EDWARD E. GARRETT, recalled for redirect examination.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Garrett, you were asked on cross-examination yesterday by counsel for the defense about your connection with a railroad. I will ask you to tell me what that railroad was, and when it was organized.

A. I don't remember exactly when it was organized; it was sometime in the summer of 1901. It was promoted by Mr. Beggs and Mr. Pinney and Mr. Ruick. Mr. Pinney first spoke to me regarding it. It was a local enterprise, projecting a road from Boise into the Basin country. We were simply in it as promoters; none of us were capitalists. The surveys were made by the company early in the fall, I believe, of 1901, and the active promotion of the railway was turned over to Mr. Beggs and Mr. Ruick, I had simply a nominal interest in the road.

(Testimony of Edward E. Garrett.)

Q. Was stock issued in that road?

A. No, stock was never issued; it was never organized to the extent of issuing the stock. I was named in the articles of incorporation as a stockholder, holding one share, but the stock was never actually issued.

Q. What was the par value of the stock?

A. I don't remember; I think it was \$100; I am not sure.

Q. Did you have any money invested in that company?

A. About \$100 was put into it originally by me for the surveys; that was the extent of my investment.

Q. Well, was a railroad ever built, franchise granted it, or what was done?

A. The railroad was never built; the surveys were made, and plats of the surveys filed, and rights of way secured; I presume they have expired now.

Q. That was in the summer of 1901?

A. 1901.

Mr. BUNDY.—Do you mean to say that the plats were filed in the summer of 1901?

A. I don't remember just when the plats were filed; as I remember, the surveys were made, and when the engineer filed those plats I don't remember, but it was after that time.

Mr. BUNDY.—The records here would show, wouldn't they?

A. The records here would show, yes.

Mr. BUNDY.—I object to that, as the records would be the best evidence.

(Testimony of Edward E. Garrett.)

Mr. GORDON.—I didn't know that my question had reference to when the plats were filed; it had reference to the incorporation of the railroad, or the time efforts were made to get these rights of way, and I will ask you when that was.

A. Well, following the organization of the company in the summer of 1901, the surveys were made, early in that fall, I believe, and after the surveys, why, the engineer, of course, made up his plat from his notes; I don't remember just when.

Q. I just want to know about what time.

A. These actions were taken—it was along following the organization of the road.

Q. Was it in 1901 or 1902?

A. The filing of the plats might have run over into 1902. I don't recall; the thing drug along after that, and it has been five or six years since there has been any meeting of the members of the company; it has been practically defunct for several years.

Q. With reference to your action as Receiver of the land office in holding up final proofs of entries in what is known as the Crooked River and Boise Basin, I will ask you when you first began to hold up final proofs in those cases?

A. I first held them, suspended action under that general order of July 13, 1901; then in the April following we didn't take action under the Commissioner's letter of April 10th and April 22d, until after the order, until after the letter of June 6, 1902; after that, whenever there was any sufficient reason,

(Testimony of Edward E. Garrett.)

or anything sufficiently definite, why we suspended the proofs.

Q. Now, were any of the final proofs that were held up by you proofs of entrymen whose claims afterwards were deeded to the Barber Lumber Company?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and not the best evidence of what was deeded to the Barber Lumber Company.

A. I believe so.

Q. I will ask you if you held up the final proof of John I. Wells.

A. Yes, that proof was held up after the time it was offered, under the general order, and suspension was continued after the letter of June 6, 1902.

Q. And suspension was continued until when?

A. I don't remember; I think a year or so; I don't remember whether receipt was ever issued or not; I believe it was.

Q. With reference to the claim of Arthur Anderson, did you suspend final proof on that?

A. Yes, that proof was suspended under the general order, and suspension continued, never was allowed, was finally cancelled.

Q. And James T. Ball?

Mr. BUNDY.—Just name all of those; those five were never issued.

A. James T. Ball—the same action as was taken in the Anderson case; it is true also of Harvey H. Wells; I think that in the Hunter case his entry was allowed and final receipt or certificate issued, but the

(Testimony of Edward E. Garrett.)

entry was held under suspension by order of the general land office, and patent never issued.

Mr. GORDON.—Q. Mr. Garrett, you spoke yesterday of money that was paid at the time of tender of making final proof, and that you gave what you called a temporary receipt for it, and placed that money to your credit as receiver of the land office. Is that correct? A. That is correct.

Q. And the amount so held by you aggregated about \$60,000.

A. At one time I had as much as, something like \$65,000 or \$70,000 of those unofficial moneys, unearned fees and unofficial moneys.

Q. I will ask you if, at any time you held that amount of money, any of the claimants who had paid that money in to you had wanted that money returned would you have returned it to them?

A. Yes, I did return it in several cases.

Q. To whom did you return money?

A. I recall returning the deposit made by Dora C. Burns.

Q. State the occasion of your returning the money and what the circumstances were.

A. She had offered proof; it was suspended under this general order, and during the suspension she called at the office several times regarding the matter, and on one occasion was quite voluble and said she ought to have the land or her money. I told her if she wished to abandon the claim, her filing, I could return the money to her; she filed a relinquishment or waiver of her claim to the land, and

(Testimony of Edward E. Garrett.)

I took her voucher for the \$410 which she had deposited, and gave her the money; she seemed to be very much pleased.

Q. And did anyone object to your paying her that money, or remonstrate with you afterwards for having returned that money to her?

A. Why, no, no further than that Mr. Dockery, E. J. Dockery, the attorney referred to, had called very shortly afterwards and asked if these entrymen could get their money back, if I had the right to return it to them, and I told him that I did.

Q. Was that all?

A. That was about the substance of it; it seems to me I returned the money in one or two other cases, but I don't recall the ones.

Mr. BUNDY.—I neglected in my statement to make one statement that I want to make now on the record, so that I may have a record of it. The attorneys for the defendant request and demand of the attorneys for the Government that they produce, for the examination of defendants' solicitors, before the Examiner, at this hearing, all the books, accounts, correspondence, and other records of the land office at Boise, and the Land Department at Washington, or in the possession of the United States Government at any place, relative to the acquisition of the lands described in the bill of complaint in this action; particularly demand the production before the Examiner, for the use and inspection of counsel for the defendant, of all the papers on file with each entry in which the entrymen have been examined which have

(Testimony of Edward E. Garrett.)

not been introduced in evidence. Do you gentlemen see fit to do that, or shall I apply for an order?

Mr. KEIGWIN.—Counsel for the complainant state that the papers last mentioned by Mr. Bundy are in the room adjoining to this, and are open to Mr. Bundy's inspection at any time that he sees fit to look at them; that the records of the land office are not in the possession of counsel for the complainant, but are accessible to Mr. Bundy, and are subject to his inspection equally with any other person who sees fit to go to the land office and ask for them.

Mr. BUNDY.—That is satisfactory; then you will have all the papers and correspondence in this other room here. Are they there now?

Mr. KEIGWIN.—Come to that room at any time that we are there, or that any of our assistants are there.

Mr. BUNDY.—Are they there now?

Mr. KEIGWIN.—I understand they are; if I understand what you mean, they are; of course you may have some things in mind that I don't know.

Mr. GORDON.—Q. Mr. Garrett, what is that book that you have before you?

A. This is a register of scrip locations, commonly called scrip locations—lieu selections.

Q. And is that a record of the local land office?

A. Yes.

Q. I will ask you to look at page 450 of that book and tell whether the notations on that page were made when you were receiver of the land office?

A. Yes, those notations were made while I was

(Testimony of Edward E. Garrett.)

receiver of the land office.

Q. I will ask you to state what is indicated on that page.

A. On November 5, 1903, the selection of the Northern Pacific Railway Company, through its land commissioner, was allowed and approved by the register and receiver of the local office for certain unsurveyed lands in townships 6 north, 9 east, 7 north, 9 east, 8 north, 7 and 8 east.

Q. Now I will ask you to read what is on that page.

A. Selected land, northwest quarter of the northeast quarter, the south half of the northeast quarter, the north half of the northwest quarter, section 26, 8 north, 7 east, Boise Meridian; the northeast quarter of the southeast quarter, the south half of the southeast quarter, section 26, same township; the northwest quarter, the east half of the southwest quarter, the southwest quarter of the southeast quarter of section 30, 8 north, 8 east; the south half of the southeast quarter of 32, same township; northwest quarter of the northeast quarter, the north half of the northwest quarter, section 4, township 6 north, range 9 east; the southwest quarter of the southwest quarter of section 18, township 7 north, range 9 east, the southwest quarter of the northwest quarter of section 28, same township; north half of the northwest quarter, the southwest quarter of the northwest quarter, section 30, same township; northeast quarter of the southeast quarter, section 32, same township; these lands were selected in lieu of a like quan-

(Testimony of Edward E. Garrett.)

tity in township 18 north range 14 east, Willamette Meridian.

Q. I will ask you whether these lands you have just read were selected by the Northern Pacific Railway Company?

A. The selections were made by the Northern Pacific Railway Company, yes.

Q. On what date?

A. The selection was approved and allowed in the local office November 5, 1903.

Q. Who was the land commissioner of the Northern Pacific that made the selection?

A. The selection was made in the name of William H. Phipps, the land commissioner of the Northern Pacific Railway Company. Selection number two on the same page, November 5, 1903, by the Northern Pacific Railway Company, through its land commissioner, William H. Phipps, for the south half of the southwest quarter 23, 8 north, 7 east, Boise Meridian; the northeast quarter of the southwest quarter, the northwest quarter of the southeast quarter, section 25, same township; southeast quarter of the southwest quarter, south half of the southeast quarter of section 25; northeast quarter of section 35; east half of the southeast quarter of section 35, township 8 north, range 7 east; the east half of the northwest quarter of section 31; south half of the southwest quarter, the southwest quarter of the southeast quarter of section 33, township 8 north, range 8 east; northwest quarter and west half of the southeast quarter, and southwest quarter of section

(Testimony of Edward E. Garrett.)

19; southwest quarter of the southwest quarter of section 21; southeast half of the northwest quarter, northwest quarter of the southeast quarter, section 29; south half of the northwest quarter, east half of the southwest quarter, southwest quarter of the southwest quarter, west half of the southeast quarter, section 33, township 7 north, range 9 east; southwest quarter of the southeast quarter of section 35, 8 north, 7 east, Boise Meridian, in lieu of a like quantity of lands in township 12 north, 22 west; 30 north, 29 west; 1 south, 3 west; 29 north, 30 west; 5 north, 20 west; 2 south, 8 east; Willamette Meridian.

Q. Mr. Garrett, I shall ask you when the applications were made by the Northern Pacific for this location of their scrip to the land office here.

Mr. BUNDY.—Does it appear of record?

The WITNESS.—It doesn't appear on here.

Mr. BUNDY.—Well, does it appear any place?

The WITNESS.—Why, there was correspondence regarding it.

Mr. BUNDY.—I object to Mr. Garrett testifying as to this.

Mr. GORDON.—Q. Do you know whether there is any correspondence in the local land office with reference to it?

A. Yes, there is some correspondence in the local office with reference to the selection, of prior date to this; the selections were presented first, before that correspondence, however.

Mr. BUNDY.—Do the records show that?

A. I don't know; I presume so.

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—You know when a selection is made; the land office will show it?

A. This selection was presented and certain defects were pointed out to them, and then it was presented formally and rejected formally, so there would be no record of that first presentation of it.

Mr. BUNDY.—I object to this witness testifying to the records of the land office, for the reason that the records are the best evidence.

Mr. GORDON. I will ask you if, when the selections were first presented, whether there is any record of it in the land office?

A. I think not at the time the selections were first presented.

Q. Can you remember when they were first presented?

A. I know about when they were presented.

Q. About when was it?

Mr. BUNDY.—I object to that as incompetent, irrelevant, and immaterial, and not the best evidence of when selections were made in the land office; the records are the best evidence.

A. About the first part of October, 1903.

Mr. GORDON.—Just a month or so prior to this?

A. Yes; it may have been in the latter part of September, but, as I remember, it was sometime about the first of October, 1903.

Q. Mr. Garrett, do you know Mr. Louis M. Pritchard, of Boise, Idaho?

A. I did know him, yes.

Q. The party mentioned in this suit?

(Testimony of Edward E. Garrett.)

A. Yes.

Q. Did you ever see him write? A. Yes.

Q. Would you know his handwriting where you would see it? A. I think so, yes.

Q. Do you know Mr. John Kinkaid; he was named in the bill in these proceedings?

A. Yes.

Q. Did you ever see him write? A. Yes.

Q. Would you know his handwriting if you would see it? A. Yes.

Q. Do you know Mr. John I. Wells?

A. Yes.

Q. Named in the bill of complaint in this proceeding? A. Yes.

Q. Did you ever see him write? A. Yes.

Q. Would you know his handwriting where you would see it? A. I think so.

Q. Do you know Mr. Frank Martin, ex-Attorney General of the State of Idaho? A. Yes.

Q. Did you ever see him write? A. Yes.

Q. I will ask you if you would know his handwriting where you would see it?

A. I think I would, yes.

Recross-examination.

(By Mr. BUNDY.)

Mr. GORDON.—Let the record show that the witness had been excused, and that counsel for the defense then indulged in a conversation with Mr. Garrett, before recalling him.

Mr. BUNDY.—Do you know where your wife got the money with which she made final proof?

(Testimony of Edward E. Garrett.)

A. I don't recall now where she got it; I don't remember.

Q. Do you know how long she had had it?

A. She had had sufficient money to make such an investment for several years.

Q. But you don't know where she got it?

A. Well, we have been married for something like fifteen or twenty years.

Q. Has she been engaged in any separate business of her own?

A. She had money that she made from some mining property of hers.

Q. Where was this property? A. Pearl.

Q. Who bought mining property for her?

A. A brother of hers bought the mining property, or rather she acquired an interest in a mine with her brother, and her father had sold that mining property.

Q. When did she sell?

A. I don't recall; it was several years before she made this filing.

Q. Who did she sell to?

A. She sold under bond to a man by the name—I don't recall now.

Q. How much did she get for her interest?

A. Something like \$1200, I believe.

Q. What did she do with the money?

A. Part of it went into this timber claim.

Q. What did she do with the rest?

A. I don't know.

Q. What did she do pending the time she sold out

(Testimony of Edward E. Garrett.)

and the time she made final proof? Did you have it?

A. I probably had it part of the time.

Q. Where was it the rest of the time?

A. I don't know.

Q. How long before she made her final proof did you give her this money that you had?

A. I don't recall.

Q. How long did she have the actual money, bills, actual money that she made final proof with in her possession before she made final proof?

A. I don't know.

Q. You remember that you gave it to her?

A. No, I don't remember giving it to her.

Q. Do you remember where she got it?

A. I do not.

Q. Is your wife in town? A. She is.

Q. How long after she made final proof did she sell?

A. Several years; I don't remember exactly.

Q. Who negotiated the sale?

A. I don't recall that, unless it was Mr. Hoseley.

Q. And who located her? A. Mr. Gardner.

Q. Did you pass on her final proof?

A. I did; that is, I did jointly; the proof wasn't made before me, no.

Q. Who was it made before?

A. Before the register.

Q. It was during the time you were in the land office? A. Yes.

Q. What answer did she make as to where she got the money? A. I don't know.

(Testimony of Edward E. Garrett.)

Q. What answer did she make as to how long she had had it in her possession? A. I don't know.

Mr. BUNDY.—We would like to have the Government produce for further examination of Mr. Garrett, the final proof and filing papers of Mrs. Emma Garrett.

Mr. GORDON.—I will state for the benefit of counsel for the defense that my idea is that all papers that are in this case and haven't been sent for are in Washington; I haven't seen them.

Mr. BUNDY.—All right; if they are not here, of course, you can't produce them.

Mr. GORDON.—Of course, if council wants them and they are in Washington I will produce them. Of course it takes five days. Did you say you want to see them?

Mr. BUNDY.—Yes, I want to see them.

Mr. GORDON.—In connection with this bill?

Mr. BUNDY.—No. Half the evidence you have taken isn't in connection with this bill. You have had him on the stand half a day examining him about this scrip land.

Redirect Examination.

Mr. KEIGWIN.—Mr. Garrett, I will keep you but a minute. On September 14, 1903, were there any scrip locations made in township 6 north, 4 east?

A. No.

Q. Of course there could have been none prior to September 14th? A. There wasn't any.

Mr. BUNDY.—Does this book show the records of the scrip, or does any book, I mean? A. Yes.

(Testimony of Edward E. Garrett.)

Mr. BUNDY.—I object to any evidence as to when scrip was located, as not the best evidence, and insist upon the production of the books showing the location of the scrip.

The WITNESS.—I guess all the scrip is in that book.

Mr. BUNDY.—Well, look in the book.

Mr. KEIGWIN.—Q. Do you remember how long after September 14 the first scrip locations were made in that township?

A. I don't remember; it was sometime after September 14th, 1903. The first scrip location made in township 6 north, 4 east, was April 14, 1904, made in connection with selections in other townships by Sumner G. Moon, by Frank Steunenberg, attorney in fact; that was a forest reserve lieu selection.

Q. Do I understand that there were no scrip selections made in 6 north, 4 east prior to April, 1904?

A. Yes.

Recross-examination.

(By Mr. BUNDY.)

Q. Mr. Garrett, do you recall on September 14, 1904, or within a few days of that date, of the question being raised in the local land office here as to whether or not a person with scrip would be given a preference right over timber and stone entries?

A. I don't recall the question being raised; I don't understand that there would be any question about it.

Q. Do you recall having the question asked you as to whether or not a person who desired to locate

(Testimony of Edward E. Garrett.)

scrip could locate more than 160 acres before he would have to pass on and give the next man a chance? A. I do not.

Q. Do you remember that you finally held, you or your associate, or jointly, that the timber and stone people would have the preference right over scrip?

A. No, I don't recall any such ruling, because I never so understood the law or the regulations.

Redirect Examination.

(By Mr. KEIGWIN.)

Q. Is there any regulation which limits the acreage which may be taken by one applicant for scrip at one presentation? A. No.

Q. If a man had 6000 acres of scrip, he could locate it, although there might be other intending entrymen in the line, he wouldn't have to give way to anybody? A. That's right.

(Witness excused.)

[Testimony of Mrs. Nettie Weston, on Behalf of the Complainant.]

MRS. NETTIE WESTON, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Nettie Weston? A. I am.

Q. Mrs. Weston, what was your maiden name?

A. Martin.

Q. And will you tell me what your mother's

(Testimony of Mrs. Nettie Weston.)

name is? A. Mary J. Martin.

Q. And your father's name?

A. Thomas B.

Q. And you have a brother by the name of Thomas Martin. What is his initial?

A. Thomas L.

Q. Do you know Mr. Frank Martin, the former attorney general of the State of Idaho?

A. Yes.

Q. Is he a relative of yours?

A. He is my uncle.

Q. He is your father's brother? A. Yes.

Q. You took up a claim under the Timber and Stone Act in September, 1905, did you?

A. I did, yes.

Q. I show you timber and stone land sworn statement of Nettie Weston, dated September 19, 1905, and ask you if that is your signature to that paper?

A. Yes.

Mr. BUNDY.—I object to the introduction of any evidence relative to the timber and stone entry of Nettie Weston, for the reason that such claim or entry is not mentioned in the bill and not embraced in the issues made by the pleadings in this case.

Mr. GORDON.—Q. And you filed that paper in the land office, did you? A. Yes.

Q. I show you non-mineral affidavit of Nettie Weston of the same date, and ask you if you signed that paper and filed the same in the land office?

A. Yes.

Q. I show you affidavit, dated December 22, 1905,

(Testimony of Mrs. Nettie Weston.)

signed Nettie Weston, and asked you if you signed and swore to that paper, and filed it in the land office at Boise? A. Yes, I guess I did.

Q. I show you the testimony of Nettie Weston given on final proof, December 22, 1905, and ask you if you signed that paper?

A. Yes, that is my signature.

Q. And you filed the same in the land office?

A. Yes.

Q. I show you the cross-examination of Nettie Weston taken on final proof, December 22, 1905, and ask you if you signed that paper and filed it in the land office? A. Yes.

Q. Mrs. Weston, who first spoke with you about taking up a claim under the Timber and Stone Act?

A. Either my mother or father.

Q. Do you remember how long it was before you filed your original papers?

A. Well, they came and told me about the claim, and we started in a day or two to see it.

Q. What did they tell you about the claim?

A. Just told me there was a claim for entry; father said if I wanted to go that he would take me.

Q. Were you married at that time?

A. I was.

Q. And did you have the money at that time with which to purchase a timber claim?

A. I did not.

Q. And did they tell you how much it would cost you?

(Testimony of Mrs. Nettie Weston.)

A. I don't believe there was anything said about it.

Q. Did they tell you anything about purchasing a relinquishment? A. Yes.

Q. When was that?

A. Well, I guess it was before I went, I don't remember; but I know I knew that there was to be a relinquishment.

Q. And who were you to get that relinquishment from?

A. From my uncle, Frank Martin.

Q. And, as I understood you to say, they came and told you that there was a timber claim that you could take up, and that a day or so afterwards you went up to look at the timber claim?

A. Yes.

Q. Who went with you?

A. My father.

Q. Anyone else? A. No.

Q. Where did you go to look at this claim?

A. We went in above Centerville, somewhere up there; it was somewhere up there.

Q. Who located you on a claim?

A. My father.

Q. Who paid for the expense of the team to go up there? A. My father paid it.

Q. Did he pay it, or did you borrow the money from him with which you paid it?

A. Well, I was to pay him; he paid the money at the time, but I was to pay him.

Q. And do you know how much it cost?

(Testimony of Mrs. Nettie Weston.)

A. Oh, I don't know just exactly, just whatever a team is for the length of time we were gone; I don't know just exactly what it was.

Q. When did you pay for the relinquishment?

A. My father paid it for me; I don't know anything about it.

Q. Then you went to the land office to make final proof, did you? A. I did.

Q. Did you go alone, or with whom did you go?

A. All those that proved up were up here, came down to the land office.

Q. Well, did you just meet them there, or did you go to the land office with some one?

A. Why, I went with mama, I suppose; I lived up here by them; I guess I went with her.

Q. When you went to the land office to file your papers did you go alone?

A. I think I went with my brother Tom.

Q. Do you know who made out these papers that you filed in the land office?

A. I think brother Tom, but I am not sure; it has been so long that I have forgotten.

Q. Did you take the relinquishment to the land office the day you went to file?

A. I never had anything to do with it; I don't know; father tended to it for me, and I don't know; you will have to ask him about that.

Q. You remember the occasion of your making your final proof?

A. I just came to the land office and made final proof.

(Testimony of Mrs. Nettie Weston.)

Q. Did you go to the land office once to make proof, and they wouldn't allow you to make proof at that time, and you had to go back at some subsequent date?

A. I don't think so; the best I remember, I didn't.

Q. Do you know how much money you paid in the land office when you made your final proof?

A. \$415, I think.

Q. Do you know whether you paid that in check or in cash?

A. Why, my father had the money.

Q. He went with you?

A. Yes, he was up here; he was a witness, I think, for some of the rest of them; I am not sure.

Q. And he paid that in for you?

A. Yes.

Q. Did you ever give him any note or security for any of the moneys he advanced you?

A. No.

Q. You didn't pay him any interest, did you?

A. No.

Q. How long after you made your final proof did you negotiate for the sale of this property?

A. Oh, I don't remember, not so very long.

Q. A week?

A. I suppose it was longer than a week; I don't remember how long it was.

Q. With whom did you negotiate for the sale of it?

A. I sold it to my uncle, Frank Martin.

(Testimony of Mrs. Nettie Weston.)

Q. And did he pay you for it? A. Yes.

Q. How much did he give you?

A. \$800 or \$850.

Q. Did he give you \$850, or didn't he give you a check for \$250?

A. He gave me a check. We added up what I owed papa and I got a check for the rest of it, and left father's with uncle in the office.

Q. And all you got out of the transaction was a check for \$250, from Frank Martin?

A. Yes, that is what I got out of it.

Q. That is the only money that you handled in the transaction? A. Yes.

Q. Now when you were first spoken to by your mother or father about taking up a claim, did they tell you of a market for these claims?

A. No.

Q. Did they tell you to whom you could sell them? A. They did not.

Q. Did you know of anyone that you could sell them to? A. No.

Q. Did you know of anybody else that had sold timber claims?

A. Papa had a claim and he sold it.

Q. Did you know to whom he sold his?

A. No, I had been at Coeur d'Alene for quite a while.

Q. Do you know how long before you made your entry he sold his?

A. Papa took his up while I was out of the city, so I don't know; it was before I came back.

(Testimony of Mrs. Nettie Weston.)

Mr. KEIGWIN.—You will agree that this land was conveyed to the Barber Lumber Company?

Mr. BUNDY.—Well, a long time afterwards.

Mr. GORDON.—Have you the deed? We haven't the deed; we never had the deed.

Mr. BUNDY.—Who do you mean—this lady?

Mr. GORDON.—No, she deeded to Frank Martin, and Frank Martin deeded to the Barber Lumber Company.

Mr. BUNDY.—Well, a long time afterwards.

Mr. KEIGWIN.—If you will give us the date—

Mr. BUNDY.—Well, I don't care to do that. You can put Frank Martin on and prove it. This piece of land isn't mentioned in this action. If you want to prove that the land was conveyed to the Barber Lumber Company by Frank Martin, you can put him on.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Nettie Weston, dated September 19, 1905; the non-mineral affidavit of Nettie Weston of the same date; the testimony of Nettie Weston given before the land office on final proof, dated December 22, 1905, and the cross-examination thereto attached; the affidavit, dated December 22, 1905, by Nettie Weston, all of which papers have been identified by the witness, Nettie Weston, as having been signed by her, and filed in the land office, at Boise; the receiver's receipt, and the register's certificate, dated December 22, 1905, all to the southeast quarter of section 14, township 7 north of range 5 east, Boise Meridian.

(Testimony of Mrs. Nettie Weston.)

(Marked Plaintiff's Exhibit No. 147A to 147O, inclus.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mrs. Weston, at the time you filed your original papers, your first papers, in the land office, had you at that time entered into any agreement of any kind or character, in writing or verbal, express or implied, with any person, firm or corporation, by which any such person, firm, or corporation had, or was to acquire, any right, title, or interest in the title you might acquire from the United States?

A. I had not.

Q. Had you any such agreement, or similar agreement, at the time of making final proof?

A. I had not.

Q. Had you entered this land for the benefit of any person other than yourself?

A. I did not.

Q. Mrs. Weston, you say you sold this to your uncle for \$800? A. Yes.

Q. What, if any, instructions did you give him with reference to paying your father the money he had advanced to you?

A. I told him that whatever it was, after the expenses was paid, was mine, and the rest of it was papa's.

Q. Had you made arrangements with your father to have him loan or advance to you the necessary amount of money to make the proof?

A. Yes, papa was to let me have it.

(Testimony of Mrs. Nettie Weston.)

Q. And the money repaid to him was repaying the loan he had made you? A. Yes.

Q. Did you uncle ask you to sell it?

A. He told me, he advised me to keep my timber claim, that he thought I could get more out of it by holding it.

Q. And you had to go to him the second time?

A. Yes.

Q. What did he finally tell you—that if you was bound to sell he would take it?

A. That is just what he told me.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Weston, do you remember when you testified here at Boise on the 14th of September last, in the proceedings of the United States vs. James T. Barber and Sumner G. Moon, and others, for removal of those gentlemen from Wisconsin to Boise for trial? Do you remember the occasion?

A. Yes, I was there.

Q. Do you remember on that occasion whether or not you stated that you purchased a relinquishment, and that your father furnished you the money to pay for that relinquishment?

A. Yes, I guess I did.

(Witness excused.)

At this time an adjournment was taken until two o'clock, at which time the taking of testimony was resumed, the Examiner and counsel for the respective parties being present.

[Testimony of Leon S. Simpson, on Behalf of the Complainant.]

LEON S. SIMPSON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Leon S. Simpson?

A. Yes, sir.

Q. Where do you reside, Mr. Simpson?

A. Boise, Idaho.

Q. How long have you resided at Boise?

A. About twenty-four or five years.

Q. What is your occupation?

A. Bookkeeper.

Q. By whom are you employed?

A. The Falk Mercantile Company.

Q. And you have been employed there for a number of years?

A. Yes, sir.

Q. Mr. Simpson, you took up a claim under the Timber and Stone Act in September, 1905, did you not?

A. Yes, sir.

Q. I show you timber and stone land sworn statement of Leon S. Simpson, dated September 16, and ask you if that is your signature to that paper, and whether or not you filed it in the land office?

A. Yes, sir.

Mr. BUNDY.—I object to the evidence relative to Mr. Simpson's timber and stone entry, for the reason that such entry is not involved in this case, and

(Testimony of Leon S. Simpson.)

the defendants are not alleged to have acquired any lands through Mr. Simpson, or which he entered.

Mr. GORDON.—Q. I show you non-mineral affidavit of Leon S. Simpson, sworn to September 16, 1905, and ask you whether you signed that paper and filed it in the local land office at Boise?

A. I signed the paper. What is that?

Q. It is a non-mineral affidavit that you made at the time you made your filing. I show you the testimony of Leon S. Simpson, given on final proof, in the local land office, December 22, 1905, and ask you if you signed that paper?

A. Yes, sir.

Q. And the cross-examination of Leon S. Simpson, attached, is that your signature to that paper?

A. Yes, sir.

Q. Mr. Simpson, at the time that you made the filing which you have identified here, I will ask you if you know of anyone that would purchase your claim? A. I did not.

Q. Did you know of any persons that were purchasing timber claims? A. Yes, sir.

Q. Who did you know that were purchasing timber claims?

A. I knew that the Barber Lumber Company were purchasing timber claims, and also Mr. Wilbert, the Payette Lumber & Manufacturing Company, I think the name is.

Q. Did you know of anybody that had sold to either of those companies?

A. I don't know that I do; I don't remember.

(Testimony of Leon S. Simpson.)

Q. Who first spoke with you about taking up a claim under the Timber and Stone Act?

A. About taking this claim?

Q. Any claim?

A. I don't remember of anyone speaking about it any more than I talked with parties about it.

Q. You did the talking then?

A. That's right.

Q. Who did you talk with?

A. I think I talked with a number of the men in the store.

Q. Name some of them?

A. Mr. Cunningham, I think, Arthur E. Cunningham, Mr. Leo J. Falk.

Q. And when was it that you talked with them about it?

A. That was about a year before I took the claim; they had taken claims prior to that time, part of them, and I think I talked to them about it about the time they had taken their claims.

Q. Did you know who located them on their claims? A. I don't know.

Q. Did you know through whom they were located?

A. I suppose I knew at the time, but I don't remember now.

Q. Now, the first time they spoke with you, or you spoke with them, about taking a timber claim, which was about a year before you did file, did you know Mr. John I. Wells at that time?

A. Not at that time, I don't think; I don't think

(Testimony of Leon S. Simpson.)

I knew him at that time.

Q. Do you know him now?

A. Yes, sir.

Q. The Mr. John I. Wells who is present here?

A. Yes.

Q. Where did you meet him?

A. I met him in the store, Falk Mercantile Company.

Q. Did he come in to see you about taking up a timber claim?

A. He was in the store, and Mr. Cunningham, I believe, told him I wanted to take up a timber claim; he called me down and introduced me to him.

Q. At that time did Mr. Wells tell you he had some claims?

A. He did; he said that they had some claims, that he was going to take a party up to locate; I think that was up the Boise River.

Q. And did he tell you he could take you along, or what did he say?

A. Yes, he said they could take me along, but I couldn't go at that time; I think that the reason I didn't go, I couldn't very well get away at that time, and there might have been other reasons.

Q. Was it for the reason that the timber he told you he had in view wouldn't cruise as many feet to the quarter section as you thought it ought to?

A. Possibly.

Q. What is your best recollection about that?

A. My best recollection is that the timber I thought was a little light, and also it would be hard

(Testimony of Leon S. Simpson.)

for me to get away, and therefore I let it drop.

Q. And then you waited about a year, as I understood?
A. Something like that.

Q. Who told you about this claim that you did file on?
A. Mr. Martin.

Q. What Mr. Martin?

A. Mr. Frank Martin.

Q. Who came and told you that Mr. Frank Martin had the claim?
A. Mr. Wells.

Q. The same John I. Wells?
A. Yes.

Q. Where did he come to see you?

A. At the Falk Mercantile Company's store.

Q. What did he say to you?

A. He said that he understood that I wanted a claim, and if I did, to go to see Frank Martin; I don't remember what he said after that—nothing to amount to anything.

Q. Did he tell you that Frank Martin had relinquishments of some claims?

A. Yes, I think that is what he said.

Q. Did he tell you how much it would cost you?

A. I don't remember his telling me how much it would cost me; he might have.

Q. Do you remember the time of day it was that Mr. Wells came to you?

A. In the afternoon, I should judge about four or five o'clock.

Q. How long did Mr. Wells talk with you?

A. Just possibly a few minutes.

Q. Then did you go directly, just quit your work, and go to see Mr. Martin?

(Testimony of Leon S. Simpson.)

A. I went to see Mr. Martin before six o'clock.

Q. And then returned to your place of business?

A. Yes.

Q. Did you know Mr. Frank Martin?

A. I knew him slightly, I think; I don't know as I knew him except by sight.

Q. And you went to Mr. Frank Martin's office?

A. Yes, sir.

Q. What did you say to him when you went there?

A. Told him that Mr. Wells told me that he had a timber claim, or a relinquishment of a timber claim—I don't remember which now—that I could get, and I wanted to see him about it.

Q. And he told you that he had?

A. He told me that he had.

Q. Did he tell you how much it would cost you?

A. Yes, he said it would cost me \$100.

Q. Did he tell you that he had several others that he had disposed of?

A. He said he had one claim left, out of four, if I remember right.

Q. Did he tell you when the others were going up to look over this land?

A. Yes; the next morning they were going.

Q. And you made arrangements to go with them?

A. Yes, sir.

Q. Where did you go?

A. We went to Centerville the next day, stayed over night, and the next morning went up to where the timber was, and went over the land, and back

(Testimony of Leon S. Simpson.)

to Centerville that evening.

Q. And who went with you?

A. Mr. Tom Martin—

Q. That is a nephew of Mr. Frank Martin?

A. That is a brother of Frank Martin—and Mrs. Tom Martin, and Mrs. E. J. Phelps, and Mr. Tom Martin's son—I don't know his name.

Q. Did you pay for the team that drove you up there?

A. Yes, I went in a separate team; I didn't go in their team.

Q. You hired your own team and went along with them? A. Yes, sir.

Q. And did you pay a location fee?

A. I paid Mr. Tom Martin \$10.

Q. And then you returned to Boise, after going over this land? A. Yes, sir.

Q. And did you go back to Mr. Frank Martin's office to tell him that the land was satisfactory to you? A. The next morning, yes.

Q. Did you pay for the relinquishment then?

A. No, sir.

Q. When did you pay for the relinquishment?

A. After the relinquishment was accepted; it wasn't accepted, as I understand, when we first took it to the land office.

Q. Now let me understand that. The day after you came back you went to Mr. Frank Martin's office? A. Yes, sir.

Q. And did he prepare your filing papers for you?

(Testimony of Leon S. Simpson.)

A. Mr. E. J. Phelps helped me prepare my papers.

Q. Where did he help you prepare them?

A. In Mr. Frank Martin's office.

Q. And then did Mr. Frank Martin give you the relinquishment to take to the land office?

A. He took it himself and came up with me.

Q. And did you file your papers that day?

A. He took the relinquishment in, and the people—how I remember is, that for some reason they wouldn't accept the relinquishments at that time; I don't think there was any filing made that day.

Q. How long was that before you did file?

A. I think it was about three months.

Q. Then you went up to view this land in June?

A. The latter part of June.

Q. And was Mr. Phelps there with you at that time; did he go to the land office with you?

A. I think he went up; Mrs. Phelps went along, and I think he went with her.

Q. Was Mrs. Mary J. Martin, Mr. Tom Martin's wife, there? A. Yes, sir.

Q. And they were all treated the same way, they didn't allow anyone to file? A. Yes, sir.

Q. Who notified you that the relinquishments would be accepted? A. Mr. Martin.

Q. Did you go to his office again then?

A. No, I think he telephoned me then to come up to the land office, that they would be accepted, and I came up here and met them.

Q. And that was on the date you filed?

(Testimony of Leon S. Simpson.)

A. That was on the day I filed.

Q. And was Mrs. Eleanor A. Phelps here that day, at the land office? A. I think she was.

Q. And Mrs. Mary J. Martin?

A. Mrs. Mary J. Martin, yes, sir.

Q. Do you know how much you paid in the land office the day you filed?

A. I think I paid some advertising charges, \$12.50.

Q. Then did you pay the fee for the relinquishment?

A. I paid that in a day or so afterwards, I think the next day.

Q. After you filed?

A. I know I paid it; I looked it up.

Q. You waited till you filed, though?

A. Yes, sir.

Q. At that time had you talked to anyone about selling this land? A. No, sir.

Q. Did you know Mr. John Kinkaid at that time?

A. No, sir.

Q. Had you talked to Mr. Frank Martin about selling the land to him at that time?

A. No, sir.

Q. Then I understood you to say you didn't know why they wouldn't let you file those papers in the land office the first time you went there.

A. I suppose I knew at that time, but the best of my knowledge now, I don't know why they were not filed.

Q. Were you there when the relinquishments

(Testimony of Leon S. Simpson.)

were not allowed, when they declined to accept the relinquishments? A. Yes, sir, I was there.

Q. Who declined to do that?

A. I think Mr. Garrett.

Q. Did you hear what he said about them?

A. I don't think I did; I know he and Mr. Martin had a conversation about it; I don't think I heard it.

Q. Do you remember how much you paid in the land office when you made your final proof?

A. Four hundred dollars.

Q. An even \$400? A. Yes, sir.

Q. Do you know whether you paid that in check or in cash? A. In cash.

Q. And how long had you had that money that you paid in there?

A. I drew the money out of the store, I know, and I know I had had money on deposit there since the fore part of July.

Q. You drew the money out of the Falk Mercantile Company? A. Yes, sir.

Q. Did you have a bank account at that time?

A. I think I did.

Q. With which bank?

A. I think it was with the Capital State Bank; I had a bank account either at the Capital State or the Bank of Commerce—I think at that time it was with the Capital State. The reason I am not positive, for about a year I banked at the Bank of Commerce, and it might have been there at that time.

Q. Now, up to the time of making final proof had

(Testimony of Leon S. Simpson.)

you had any negotiations with anyone for the sale of this property? A. No, sir.

Q. How long after you made your proof did you start negotiations to sell the property?

A. I think nearly a year.

Q. Well, who did you negotiate with then?

A. Mr. Frank Martin telephoned me to come to his office.

Q. And you went to his office?

A. And I went to his office.

Q. What did he say to you?

A. He said he had the rest of those claims, had purchased them, and options on one or two others in the same vicinity, and he would like to have mine also, it was in the same locality, and he would like to have mine, if I wanted to sell it. He asked me how much I would sell it for. I told him I would sell it for \$1200, and he said that he couldn't pay that much, that he had bought the others—

Q. Did he tell you what he had paid for the others?

A. I think he said he paid \$900 for the others; I am not sure about that, but that is my recollection; and he finally offered me \$1000, for mine, and I took it.

Q. That same day?

A. That same day, yes, sir.

Q. That is the first offer for the purchase of the property that you had had? A. Yes, sir.

Q. And you hadn't tried to sell it to anyone?

A. Not myself, no; I told Mr. Cunningham, and

(Testimony of Leon S. Simpson.)

he said if he knew of anyone that was willing to buy it—

Q. Who is this Mr. Cunningham?

A. He works at the Falk Mercantile Company.

Q. What position does he hold there?

A. He is manager of the grocery department.

Q. Was he dealing in timber lands at that time?

A. No, sir, but that country up there used to be his home, and he was acquainted with the timber, and I think he possibly—I knew that he would know of anyone who would be wanting to buy it as much as anyone, or thought he would.

Q. You said Mr. Frank Martin told you that he had purchased the other claims, and had options on several others in the same locality. The other claims that he referred to, did you understand him to mean those people that located at the same time you did?

A. I supposed the ones he had bought were the ones that were located the same time mine was.

Q. And you made a deed to Mr. Frank Martin, did you? A. Yes, sir.

Q. Have you that deed now? A. No, sir.

Q. You gave it to him? A. Yes, sir.

Q. You are a married man? A. Yes, sir.

Q. Did your wife join in that deed?

A. Yes, sir.

Q. Did she go with you to Mr. Frank Martin's office that day? A. No, sir.

Q. Do you remember when she went?

A. I think they sent a notary out to the house, I am not positive; they either sent a notary out to

(Testimony of Leon S. Simpson.)

the house and she signed it there, or else she came down later and signed it.

Q. And did he pay you in cash or by check?

A. He didn't pay me the whole thing at that time; he paid \$200 down, and put the deed in escrow at the Capital State Bank, and at about the end of the month, or less than a month, he paid the balance at the bank.

Q. Less than a month, was it?

A. Yes, I believe it was less than a month.

Q. Now, did you think that \$100 was an exorbitant price to pay for a relinquishment?

A. I didn't know anything about the price of relinquishments, but I felt that it was a pretty good claim, and they were charging about \$100 for locations at that time.

Q. Who was charging that?

A. The timber cruisers or locators.

Q. What timber cruisers did you know that were charging \$100?

A. I only know through what I have heard, that they were charging that; I don't know whether anyone ever told me that they were charging that much or not, but that was my understanding, that that was what they charged for locations.

Q. When Mr. Wells spoke to you about taking up a claim in 1904—the first time, I mean—did he tell you what he would charge you to locate you on a claim?

A. I suppose he did, but I don't remember.

Q. You don't remember whether he told you that

(Testimony of Leon S. Simpson.)

he would locate you for \$25?

A. It wasn't \$25, I know; I don't remember that it was \$100, but I know it wasn't less than \$50, because I don't remember of knowing of anybody being located for less than \$50.

Q. Did your wife take up a timber claim?

A. No, sir.

Q. And about a month after you made this deed to Frank Martin, you went to the bank, and I understand you got the balance?

A. The next time my bank-book was balanced, I noticed that it had been paid; that is the only way I knew it was paid.

Q. Did they tell you how much timber would be on the quarter section that you located?

A. They told me it was estimated at about 1,900,000.

Q. Was that a bigger claim, or did the claim have more timber on it than the one Mr. Wells spoke of locating you on?

A. Yes, sir.

Q. How much did Mr. Wells tell you?

A. I think he told me they were estimated at about fifteen or sixteen hundred thousand, 1,500,000, something like that, if I remember right.

Q. This one was much larger, you understood?

A. Somewhat, yes.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Leon S. Simpson, dated September 16, 1905; the notice of publication of the same date; the non-mineral affidavit of the same date, of Leon S. Simpson; the testimony of

(Testimony of Leon S. Simpson.)

Leon S. Simpson, given on final proof, dated December 22, 1905, and the cross-examination of Leon S. Simpson, attached; all of which have been identified by Mr. Simpson as having been signed and filed by him in the local land office; the receiver's receipt, and the register's certificate, dated December 22, 1905; all to the east half of the northwest quarter, and the west half of the northeast quarter of section 15, township 7 north, range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 148A to 148L, inclusive.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Simpson, at the time you filed on this land was there in existence any contract or agreement of any kind or character, in writing or verbal, express or implied, between you and any person, firm, or corporation, by which such person, firm, or corporation had acquired any right, title, or interest in the land you might acquire from the United States?

A. No, sir.

Q. Was there any such or similar agreement at the time you made final proof? A. No, sir.

Q. Did you enter this land, or make entry, for the benefit or at the request of the Barber Lumber Company, or any of the defendants in this action?

A. No, sir.

Q. The evidence you gave before the land office at the time of filing, and at the time of final proof, was true and correct, was it? Was your evidence at the time of making filing and at the time of mak-

(Testimony of Mrs. Mary J. Martin.

ing final proof, true and correct? A. Yes, sir.

(Witness excused.)

**[Testimony of Mrs. Mary J. Martin, on Behalf of the
Complainant.]**

Mrs. MARY J. MARTIN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Mr. BUNDY.—I object to the evidence of Mrs. Mary J. Martin being received, for the reason that there is no allegation in the complaint involving title to the land entered by her, and that no claim is made that the defendants acquired any land by or through her entry.

Mr. GORDON.—Q. Your name is Mary J. Martin? A. Yes, sir.

Q. Where do you reside, Mrs. Martin?

A. Out on 6th street.

Q. And you are the wife of Thomas B. Martin?

A. Yes, sir.

Q. And what is your son's name?

A. T. L. is one.

Q. Thomas L.? A. Yes.

Q. And you are the mother of Mrs. Nettie Weston, I believe. A. Yes, sir.

Q. Mrs. Martin, you took up a claim under the Timber and Stone Act in September, 1905, did you?

A. I took up a claim, but I didn't go up there in that month; I went up in June.

(Testimony of Mrs. Mary J. Martin.)

Q. I show you timber and stone land sworn statement of Mary J. Martin, dated September 16, 1905, and ask you if you signed that paper and filed it in the local land office.

A. I haven't got my glasses; I don't know, because I can't see to tell you.

Mr. GORDON.—We will have to get you to come back again when you get your glasses.

The WITNESS.—I wouldn't swear to anything I can't see. I took up a claim; you all know I took up a claim, and I went up to a claim, and Mr. Garrett wouldn't let us file, and later we filed.

Mr. BUNDY.—We will assume that.

Mr. GORDON.—And the non-mineral affidavit of Mary J. Martin, of the same date; and the testimony of Mary J. Martin, given on final proof, December 22, 1905; and the cross-examination of Mary J. Martin; I assume that it is admitted—

Mr. BUNDY.—We will assume that they were all signed by her.

Mr. GORDON.—Mrs. Martin, who first spoke with you about taking up one of these claims?

A. My husband did.

Q. What did he say about it?

A. He told me that he knew of a claim I could get if I wanted to, and I told him I did.

Q. Had he ever talked to you about taking up a timber claim before?

A. I don't know that he had, and I don't know that he hadn't.

Q. Did you know of any market for timber

(Testimony of Mrs. Mary J. Martin.)

claims at that time?

A. I knew of people that had taken claims and had sold them.

Q. Did you know to whom they had sold them?

A. No, I do not.

Q. Did you know to whom your son had sold his claim?

A. I don't remember that I did know.

Q. Your husband had taken up his claim and sold it?

A. Yes, he had sold it, but I never knew who it was to.

Q. You never asked him?

A. No, I never asked him, and if he told me, I have forgotten.

Q. Do you know how much he made out of it?

A. No, he told me that he sold it for \$800, but I don't know as he ever told me how much he cleared on it.

Q. Did he ever tell you how much you could sell the one he had in mind for you for?

A. No, he never told me anything about it, because he never knew anything about it.

Q. Did he tell you how much this claim would cost?

A. He told me to go and take it, and it cost me \$100.

Q. Did he tell you how much the purchase price was?

A. I don't remember whether he did or not.

Q. Did you know what the purchase price would

(Testimony of Mrs. Mary J. Martin.)

be? A. No, I didn't.

Q. You knew it would be somewhere under \$800, I suppose.

A. I don't remember, because I don't know.

Q. Now this \$100 that he told you it would cost you, did he tell you how it would cost you \$100, what you would have to purchase?

A. It seems to me that he told me that somebody had taken it some time before, and that it was a relinquishment, or something.

Q. Did he tell you who held the relinquishment?

A. No.

Q. Did you ever know who held the relinquishment? A. I don't think I ever did.

Q. When you went to the land office to file your papers wasn't Mr. Frank Martin there?

A. Yes, sir.

Q. Did he have the relinquishment with him at that time? A. I don't know.

Q. You remember the first time you went to the land office they wouldn't let you file?

A. Mr. Garrett wouldn't let us file.

Q. Wasn't that because he wouldn't accept the relinquishment? A. I don't know.

Q. Did you ever pay Mr. Frank Martin \$100 for a relinquishment?

A. Mr. Martin did; I didn't.

Q. You didn't see Mr. Martin pay it?

A. I didn't see him pay it.

Q. And now the first time that Mr. Martin spoke with you about taking up a timber claim, do you re-

(Testimony of Mrs. Mary J. Martin.)

member what month of the year that was?

A. Now I think that Mr. Martin came up there to the house and said to me that he knew of a claim that I could get, and the best that I remember about it, it was on Saturday evening, in June, and we started Sunday morning; now I think that is the way of it; of course, I may be mistaken.

Q. Who went with you—Mr. Martin, your husband?

A. My husband went, and my son went.

Q. What son—which son?

A. The oldest one.

Q. What is his name?

A. L. D.—and Mrs. Phelps.

Q. Mrs. Eleanor Phelps?

A. Yes; we all went together.

Q. Was her husband with her? A. No.

Q. Mrs. Weston didn't go along?

A. No, Mrs. Weston didn't go then.

Q. Who located you on these claims?

A. My husband.

Q. Then you returned from where these claims were what day?

A. I don't know. We went up there one day, and went over the claims the next day, and the third day we came home, and the fourth day we came to the office; the best I remember, that was the way, but I don't remember the date.

Q. Do you remember when you went to file and they wouldn't allow you to file, who went to the land office with you?

(Testimony of Mrs. Mary J. Martin.)

A. Mrs. Phelps and Mr. Simpson.

Q. Mr. Edward Phelps?

A. Yes, the Mr. Phelps that was in here a minute ago.

Q. That is Mr. Leon S. Simpson.

A. Well, that is the Simpson, and my son.

Q. And was Mrs. Phelps there?

A. Mrs. Phelps went with us.

Q. And how long after the first attempt you made to file did you really file?

A. Now I couldn't say just how long it was.

Q. Well, was it a month, or three months?

A. I don't know; I couldn't tell, because I never thought of ever having to go through with this, so I didn't set it down.

Q. Who notified you of the time you were to file?

A. I don't know that; I imagine it was Mr. Martin.

Q. That is your husband, or your brother in law?

A. I expect it was my brother in law; I wouldn't say positive.

Q. Frank Martin, the ex-attorney general, is your brother in law?

A. He is my brother in law.

Q. And then you went to the land office?

A. Yes, I went to the land office.

Q. Do you remember who went with you at that time, or who was there at that time?

A. No, I don't remember.

Q. Did your son, L. D., go? A. No.

Q. Where was he?

(Testimony of Mrs. Mary J. Martin.)

A. He was in Washington.

Q. Do you know how much money you paid at the land office on that occasion?

A. No, I don't know just how much I paid. I suppose you have it just to the cent, how much I paid; I don't know.

Q. You don't remember yourself?

A. No, I don't remember.

Q. Did you pay any money, or did your husband pay it?

A. I paid it myself; I handed in the money myself; I don't remember how much it was.

Q. Was Mrs. Weston along at that time?

A. Yes.

Q. And in the meantime had she gone up and taken the claim that your son L. D. had anticipated filing on?

A. Yes, her father had taken her.

Q. Do you remember the occasion of going to the land office to make your final proof?

A. You mean do I know what I came here for?

Q. No; when you went to the land office and purchased the property.

A. Why, when I came to prove up on the claim, I had taken the claim with the intention of selling it. Is that what you mean?

Q. I mean, do you remember being in the land office making your final proof?

A. Certainly I remember being in the land office.

Q. Do you remember who was there with you at that time?

(Testimony of Mrs. Mary J. Martin.)

A. I don't remember; I suppose my husband was with me, and I guess Mrs. Phelps and my daughter.

Q. Do you remember how much money you paid in the land office on that occasion?

A. I told you just a minute ago that I didn't remember.

Q. You don't remember the first time or the second time.

A. The first time I don't suppose we paid any, and the second time I don't know; it was over \$400 though.

Q. That was when you made final proof?

A. Yes.

Q. Did you pay that in check or in cash?

A. Paid it in cash.

Q. Did you pay that in yourself?

A. I paid it myself.

Q. Where did you get the money with which you paid that? A. I had the money.

Q. Where did you have it?

A. I reckon that it was my money, and I gave it to Mr. Martin, and the best I remember he took care of it, and I don't remember whether he had it in the Capital State Bank, or where he had it, and I know I told him I wanted it, and he went and got it for me.

Q. Did you make that money yourself?

A. Yes, sir.

Q. Were you in business for yourself?

A. I kept boarders.

Q. You didn't have any bank account of your own? A. No, I didn't.

(Testimony of Mrs. Mary J. Martin.)

Q. The money was in the bank in your husband's name? A. In my husband's name.

Q. Did you ever keep a bank account?

A. I never did.

Q. Now, at that time did you have any arrangements with anybody to sell this land to them?

A. No, I didn't.

Q. And how long after that was it that you started your negotiations for the sale of this property?

A. I didn't offer my claim for sale at all.

Q. Well, did someone offer to purchase it from you?

A. I told Mr. Frank Martin—he had some claims, and I said, “Now, Frank, whenever you see an opportunity of selling your claims, you let my claim go with your claims,” and he said, “All right,” and that was all that was said about it.

Q. And then did he notify you?

A. I think my husband did.

Q. Did you have any understanding as to price?

A. No, I never had any understanding, because I supposed Mr. Martin would get as much for his claims, and whatever he would take for his, I would take for mine.

Q. And you did sell your claim?

A. He sold my claim.

Q. To Mr. Frank Martin?

A. I deeded it to Frank Martin, but in selling it to him I intended for him to sell my claim in with his claims, to save me going some time and deeding

(Testimony of Mrs. Mary J. Martin.)

it.

Q. Do you know how much money you received for the claim? A. I received \$1,275 for it.

Q. Did you get the check yourself?

A. No, he give it to Mr. Martin.

Q. You never saw the money?

A. Not all of it.

Q. Mr. Martin put it back in the bank?

A. I suppose he did.

Q. You didn't endorse the check, did you?

A. I don't remember as to that.

Q. Do you remember of ever seeing the check?

A. No, I don't remember of ever seeing it.

Q. You don't know whether it was check or cash?

A. I don't know a thing about that.

Q. And Mr. Martin, your husband, put the money in the bank, and the only time you ever got any of the money *when* when you needed money your husband gave it to you?

A. I know I spent about \$500 of it myself; there was some plumbing work I had done at the house, and building.

Q. You got that from your husband?

A. I got it from my husband, got this money.

Q. Now, as I understand this, Mrs. Martin, your husband paid all the expenses of your trip going up to view this land, and the money for your final proof, and then received the money in payment for it, and the only money you saw in the transaction was as your husband gave it to you, after the deed had been made.

(Testimony of Mrs. Mary J. Martin.)

A. Why, the money was mine, as I tell you, but Mr. Martin did the business.

Q. Let me ask you this: Do you know how long you had had this money in the bank?

A. No, I don't.

Q. How long before you purchased this claim had you kept boarders?

A. About three years.

Q. And were you keeping boarders at that time?

A. I was keeping boarders at that time.

Q. And each month you gave your husband so much money to put away for you?

A. I gave him so much to put away.

Q. And you don't know how much you had?

A. I know that I had more money than it would take to pay for my claim.

Q. Your husband, when you went to pay for that claim, took the money out of the bank, and did he go to the land office with you and pay the money, or did he give you the money?

A. I told you, Mr. Gordon, twice or three times right here that I paid that myself.

Q. Your husband gave it to you that morning?

A. He gave it to me, the best I know, that morning, brought it up from the bank. Again I come up here a few more times I won't know whether I took up a claim or not, or sold one.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mary J. Martin, dated September 16, 1905; the notice of publication of the same date; the non-mineral affidavit of Mary

(Testimony of Mrs. Mary J. Martin.)

J. Martin, of the same date; the testimony of Mary J. Martin, given on final proof, December 22, 1905, and the cross-examination thereof, all of which papers it is admitted were signed and filed by the witness Mary J. Martin; the testimony of the other witnesses on final proof; the receiver's receipt, and the register's certificate, dated December 22, 1905; all to the southwest quarter of section 14, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 149A to 149N, inclusive.)

Cross-examination.

(By Mr. BUNDY).

Q. Mrs. Martin, at the time you filed on this land had you entered into any kind of agreement, with any person, firm or corporation, by which you had agreed to sell it to them, or to some person they should direct? A. No, sir.

Q. Had you made any such agreement as that, or any similar agreement, at the time you made your final proof? A. I never had.

Q. Was the money you used to pay the expense of first filing and the expense of final proof money of your own? A. Yes, sir.

Q. Earned by our own separate business?

A. My own money.

Q. And the proceeds of the land, when you sold it, remained your own?

A. I used it, of course, for the benefit of the family—you understand that—but it was my money.

Q. Your son, L. D. Martin, went up in June with

(Testimony of Mrs. Mary J. Martin.)

you with the expectation of filing on one of these pieces himself? A. Yes, sir, he did.

Q. And then, because the land had not been properly relinquished, your filings were not received until September? A. Something like that.

Q. And in the meantime your son had left the country and gone to Washington? A. Yes, sir.

Q. So that your daughter, Nettie Weston, made another trip up and finally entered the land which your son, L. D. Martin, had intended to enter?

A. That is the way of it.

(Witness excused.)

[Testimony of Eleanor A. Phelps, on Behalf of the Complainant.]

ELEANOR A. PHELPS, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Where do you reside, Mrs. Phelps?

A. Boise, Idaho.

Q. Will you tell us your husband's name?

A. Edward J. Phelps.

Q. And what is his occupation?

A. He is in the mining business at present.

Q. You took up a claim under the Timber and Stone Act in September, 1905, did you not?

A. Yes, I think that was when.

Q. I show you timber and stone land sworn statement, dated September 15, 1905, of Eleanor A.

(Testimony of Eleanor A. Phelps.)

Phelps, and ask you if you signed that paper and filed the same in the local land office on that date?

A. Yes, sir.

Mr. BUNDY.—We will admit all of those; we will admit that the original filing papers, final proof papers, non-mineral affidavit, and cross-examination produced from the land office were signed by Mrs. Phelps and filed in the land office.

Mr. GORDON.—Q. Mrs. Phelps, who first spoke with you about taking up a timber claim? -

A. Mr. Phelps.

Q. How long was that before you filed on a timber claim?

A. It was shortly before; I filed during the month of June, I think, was when I filed.

Q. Do you remember what he said about taking up a timber claim?

A. No, not his exact words, but he told me there was a chance to take up a timber claim if I cared to do so.

Q. Did he tell you that you could purchase a relinquishment? A. Yes.

Q. Did he tell you who had a relinquishment?

A. I think he did at the time, but I don't remember who had it.

Q. Do you remember whether it was Mr. Frank Martin that had the relinquishment?

A. Yes, I think he had some for sale.

Q. Did you know how much the relinquishment was to cost? A. Yes.

Q. And did you pay for your relinquishment?

(Testimony of Eleanor A. Phelps.)

A. I think Mr. Phelps paid for me; I gave him the money.

Q. How much was it? A. \$100.

Mr. BUNDY.—We make the same objection to the evidence relative to the timber and stone claim of Mrs. Phelps, that it is not in issue in this action.

Mr. GORDON.—How long before you went up to view this land was it that Mr. Phelps had told you about it?

A. I think it was a few days after he told me.

Q. Do you remember with whom you went to view this claim? A. I do.

Q. Who?

A. Mr. Thomas Martin, his wife, Mrs. Martin, and Mr. Simpson and his wife, and I think the son of Mr. Martin was along—I am not positive.

Q. Mrs. Martin and the Mr. Simpson you refer to are the lady and gentleman who have just left the room? A. Yes.

Q. Who located you on this timber claim?

A. Mr. Martin.

Q. Mr. Thomas Martin? A. Yes.

Q. Did you have to pay anything for being located?

A. Yes, I paid him for being located.

Q. How much? A. I think about \$10.

Q. And did you go in the conveyance with these others, or did you and your husband go in a separate conveyance?

A. No, I went in a conveyance with the others.

Q. Did I understand you to say to whom you paid

(Testimony of Eleanor A. Phelps.)

the \$10?

A. Why, I think my husband paid Mr. Thomas Martin \$10 for me.

Q. You didn't pay it? A. No.

Q. You understood that your husband paid it?

A. Yes, it was my money, however, that paid for it.

Q. Likewise the \$100 your husband paid that for you? A. Yes.

Q. Did you give your husband the money with which to pay it?

A. I think I did, perhaps the money, or a check for the amount.

Q. Now, at the time you located on this timber, claim did you know of a market for it?

A. No, I did not.

Q. Did you know of any persons who were purchasing timber claims?

A. No; I had heard of the Barber Lumber Company, through the papers, that they were busy.

Q. Did you know whether they were purchasing timber claims or not? A. No.

Q. No one had ever told you? A. No.

Q. Did you know of any persons who had sold any timber claims?

A. No; my husband had taken up one, but I don't remember whether he had sold it then.

Q. Do you know to whom he did sell his claim?

A. No; perhaps I have heard him say, but I have forgotten.

Q. Had he sold at the time you made your loca-

(Testimony of Eleanor A. Phelps.)

tion? A. I do not remember.

Q. Who went to the land office with you, the first time you went to file? A. Mr. Phelps.

Q. And did he prepare your papers for you?

A. I don't remember, but I don't think he did.

Q. I will ask you who prepared that sworn statement for you?

A. That is Mr. Phelps' writing in the body of the statement.

Q. And on the occasion you went the first time to the land office was Mr. Frank Martin there?

A. I think he was, but I am not positive.

Q. You remember not being permitted to file on that day?

A. I don't think I was, the day after we returned from the Basin.

Q. You went to the land office? A. Yes.

Q. And you attempted to file, and they wouldn't permit you to file? A. No, I think not.

Q. Do you know why, the reason that was given?

A. No, I don't; I do not remember.

Q. Was it something with reference to relinquishments?

A. It probably was, but I don't remember.

Q. Do you know? A. No.

Q. And were you notified the second time that you went there and did succeed in filing that you were to come to the land office?

A. I think so; I think Mr. Phelps told me; I don't remember when the filing was made, though.

Q. It was made September 16, 1905.

(Testimony of Eleanor A. Phelps.)

A. Oh, I thought that was the proof, the final proof.

Q. That was the date you filed.

Mr. BUNDY.—The final proof was in December.

A. I thought it was in the fall of the year that the final proof was made.

Mr. GORDON.—Q. Did you know Mr. Harry L. Fisher, of Idaho City? A. I never met him.

Q. Do you know who gave the names at the land office of the persons who would be your witnesses on final proof?

A. Why, I think Mrs. Martin and Mr. Martin and Mr. Simpson.

Q. Did you name those persons, or did somebody name them for you?

A. I think I named them myself.

Q. I notice that the notice of publication names one Harry L. Fisher.

A. He may have been there, but I don't remember if he was there. That name was given as a witness?

Q. Yes. Do you remember the occasion of going to the land office and making your final proof?

A. Yes, I remember that I went there; I thought it was in September.

Q. Do you remember with whom you went?

A. I went with Mr. Phelps.

Q. Do you remember how much you paid in the land office on that occasion?

A. I think it was \$430.

Q. \$400 or \$430? A. \$400.

Q. Do you remember whether you paid that in

(Testimony of Eleanor A. Phelps.)

cash or by check?

A. I think it was paid in cash.

Q. Had you been keeping that money in the bank? A. I had.

Q. Which bank? A. Capital State Bank.

Q. And did you draw the money out that day?

A. Yes, I believe I did.

Q. The account was your own account, was it?

A. It was my own account. If I didn't have that full amount in the bank, Mr. Phelps might have made up the difference, because he had some of my money invested in real estate.

Q. But you had a separate account of your own at the Capital State Bank?

A. Yes, at the Capital State.

Q. Do you remember whether or not, as a fact, you did get some money from your husband to make up that \$400? A. I am not positive.

Q. What is your best recollection at this time?

A. I am not positive about it at all; but I had at the most \$700 or \$800 at that time, but I think at that time I had about that amount in the Capital State Bank.

Q. About \$400? A. I think so.

Q. And at the time you made your final proof did you have any person in mind that you thought you could sell this property to? A. I did not.

Q. How long after that was it that you started negotiations for the sale of this property?

A. I think it was sold shortly after the first of the year 1906, about that time.

(Testimony of Eleanor A. Phelps.)

Q. And to whom did you sell?

A. Mr. Frank Martin.

Q. And that is the same gentleman from whom you got the relinquishment? A. Yes.

Q. Did he make you an offer for it, or did you and your husband go to see him?

A. My husband attended to that for me.

Q. Do you know how much you were paid for that land? A. Yes.

Q. How much? A. \$830, I think.

Q. And did you ever see Mr. Martin with reference to the sale of the land?

A. No, not with reference to the sale of the land.

Q. And where did you execute the deed, do you know; where did you sign and acknowledge the deed?

A. I think in Mr. Dunton's office.

Q. Was Mr. Martin there? A. No.

Q. Did you see Mr. Martin in the transaction at all? A. No.

Q. Was the \$830 that you received in check or cash? A. I think it was in check.

Q. Mr. Frank Martin's personal check?

A. I think so.

Q. You are not positive about that?

A. I am not positive; I think Mr. Phelps gave me the check from Mr. Martin.

Q. Gave you the actual custody of the check—didn't deposit it himself?

A. I don't know about that; I don't remember; I think he gave it to me.

Mr. GORDON.—We offer in evidence the timber

(Testimony of Eleanor A. Phelps.)

and stone land sworn statement of Eleanor A. Phelps, dated September 16, 1905; the non-mineral affidavit of Eleanor A. Phelps of the same date; the testimony of Eleanor A. Phelps, given on final proof December 22, 1905, and the cross-examination of Eleanor A. Phelps, attached, all of which have been identified by Eleanor A. Phelps as having been signed by her and filed in the local land office; the testimony of the other witnesses on final proof; the receiver's receipt, and the register's certificate, dated December 22, 1905, all to the southwest quarter of section 13, township 7 north of range 5 east, Boise Meridian.

(Marked Plaintiff's Exhibit No. 150A to 150—, inclusive.)

Q. I will ask you if you signed and filed that affidavit, dated December 22, 1905, non-alienation affidavit? A. I did; that is my signature.

Mr. GORDON.—We also offer in evidence the non-alienation affidavit of Eleanor A. Phelps, which has been identified by the witness.

Cross-examination.

(By Mr. BUNDY.)

Q. Did you at any time, Mrs. Phelps, either at the time you made your original filing, or at the time you made your final proof, have any agreement with any person, firm, or corporation?

A. I did not.

Q. Had you at either of those times, or at any time prior to making final proof, had any negotia-

tions with any person, firm or corporation, relative to the sale of this property? A. I had not.

(Witness excused.)

[Stipulation Re Statements of Entrymen, etc.]

It is stipulated by and between the parties hereto, in open court, that the several typewritten statements used by complainant on the examination of entrymen, purporting to be statements made by the respective entrymen to whom they were exhibited before N. M. Ruick, Miles S. Johnson, W. S. Wade, E. E. Garrett, or any or either of them, or before the Grand Jury, in so far as the record shows that such witnesses' attention was called to such statements and to the parts of such statements with reference to which the entrymen or witnesses were questioned, shall be received in evidence as a part of the complainant's case, with the same force and effect as though the stenographer taking such statement and transcribing the same had testified in open court in this action that such statements were true and correct statements of the witness or person purporting to make the same.

And it is further stipulated that those portions of the transcript of the evidence taken on the trial of W. E. Borah, in the cause entitled United States of America vs. John I. Wells et al., to which the witnesses' attention has been called, and with reference to which they have been interrogated in this action, may be deemed in evidence with the same force and effect as though the stenographer taking such evidence and transcribing the same had testified in open court that such transcript was a true and correct

statement of the evidence given by such witness in the Borah trial.

This stipulation shall not be construed to be an admission by either party as to the truth or falsity of the statements purporting to have been made by such witnesses in interviews with Messrs. Ruick, Johnson, Wade, Garrett, or at the Borah trial, and is to be received subject to the defendant's objection that the same is incompetent, irrelevant and immaterial, and an attempt on the part of the complainant to impeach its own witnesses.

It is stipulated by and between the parties hereto, in open court, that Leon S. Simpson, the witness examined here to-day, deeded the lands embraced in his entry to Frank Martin on August 24, 1906; that Mary J. Martin deeded the lands embraced in her entry to Frank Martin on September 28, 1906; that Mrs. Eleanor A. Phelps deeded the lands embraced in her entry to Frank Martin on January 13, 1906; and that Mrs. Nettie Weston deeded the lands embraced in her entry to Frank Martin on January 12, 1906, recorded November 12, 1906; that Frank Martin deeded to the Barber Lumber Company the lands embraced in the last four deeds mentioned on November 7, 1906, which deed was recorded on November 12, 1906. The consideration paid by the Barber Lumber Company to Frank Martin was \$5,400.00 for the four claims.

It is further stipulated and agreed by and between the parties hereto that the township plat of township 6 north of range 5 east was filed in the land office at Boise, Idaho, on August 1, 1874; that the township plat of township 6 north range 6 east was filed in the

said land office on March 28, 1898; that the township plat of township 6 north range 7 east was filed in the said land office on April 19, 1897; that the township plat of township 6 north range 8 east was filed in the said land office on April 19, 1897; that the township plat of township 7 north range 4 east was filed in the said land office on August 1, 1874; that the township plat of township 7 north range 5 east was filed in the said land office on August 9, 1897; that the township plat of township 7 north range 6 east was filed in the said land office on August 9, 1897; that the township plat of township 7 north range 7 east was filed in said land office on April 19, 1897; that the township plat of township 7 north range 8 east was filed in the said land office on March 28, 1897.

It is further stipulated by and between the parties that the following letters, purporting to be written by William Sweet to J. H. Richards, dated March 21, 1902, March 25, 1902, March 26, 1902, March 26, 1902, March 28, 1902, March 30, 1902, April 6, 1902, April 15, 1902, April 25, 1902, April 29, 1902, are in handwriting of and signed by William Sweet, and were written by and mailed by the said Sweet, and received by the said J. H. Richards in due course of mail.

Mr. GORDON.—We offer in evidence the letters embraced in the foregoing stipulation.

(Letters marked 151A to 151J, inclusive.)

Mr. BUNDY.—The defendant objects to them as incompetent, irrelevant, and immaterial.

The following are copies of the above-mentioned letters:

Plaintiff's Exhibit No. 151A.

“ASTOR HOUSE,
Broadway-Barclay & Vesey Sts.
New York,

March 21st, 1902.

Hon. J. H. Richards,
Boise, Idaho.

Dear Judge:—

Your two faivors reed contents noted. Inclosed see copy of letter to Mr. Kelley. Please keep it with my papers.

I closed the deal on Libral and did not get any money. I got two good \$5000.00 notes, also Moon paid. I had to do this, was up against it, was the best I could do. I take the balance in stock. Major had to take all stock. We half to bolster this up until we can sell stock to pay you and myself. Could you for or on your your say or mine get Bert Jones, State Oditor write a nice letter to the New York Sun about the Liberal. He writes letters every week about some mines. See if you cant work this in some way. Bert and myself are the best of friends. My big deal aint turning out quit so well. Am doing pretty well. Judge I had to let go the timber. I went at it every dollar I could get. I had to give up controle and will have only ten per cent intrest and money back and a pretty fair per cent of profit.

Kind Regards,

(Signed) WM. SWEET.”

Plaintiff's Exhibit No. 151B.

“ASTOR HOUSE,

New York, Mar. 25-1902.

Hon. J. H. Richards,

Boise City, Idaho.

Dear Sir:—

I just received your wire saying it is necessary for me to be back there. When can you come? I cannot for my life see why it is necessary for me to go back there. I do not know of anything but the timber to take me back and that is already in the Governor's hands, to make any turn that is satisfactory to him which will also be satisfactory to me and the monies coming to me could be placed to my credit in Moore's bank and the Bank of Commerce, about equally divided. Now if, on that matter what more could I do if I were back there. I could only tell him to do just what I am writing. I have told him I would sign any paper he would send me or a power of attorney. Now I cannot see for my life what there is for me to go back there for and I am very busy here—believe I would lose more than the few thousand dollars that I would make by leaving here now.

Hoping that he can arrange that matter so that I will not have to go back there, I am,

Your very respectfully,

(Signed) WM. SWEET.

I have absolute faith in the Govenor and know he will treat me right and was good enough to come to

my assistance and help me out of a mess that I never ought to have gone in. I dont know where I would have landed if it had not been for the Governor."

Plaintiff's Exhibit No. 151C.

"ASTOR HOUSE,

"New York, March 25, 1902.

Hon. J. H. Richards,

Boise Idaho

Dear Judge:—

I have never said before to either you or the Governor that when the Timber deal is closed and the money in the Bank to wire me at my expence as I will want to pay out some.

Kind Regards,

(Signed) WM. SWEET."

Plaintiff's Exhibit No. 151D.

"ASTOR HOUSE,

New York, March 26-1902.

Hon. J. H. Richards,

Boise Idaho

Dear Judge:—

Thought I would write you again this morning and can only say if it is the timber your wire means, The Govenor has been pounding at me to come home ever since I came here. Now if your wire is in regard to the timber I cant see why I should be dragged out there and leave my affairs here all mixed just to agree with the Govenor in person. Have told him in every letter that I would be satis-

fied with any deal he made only to get our money back and I would share profits with him. If this is what your wire has reference to you tell the Governor that after we get our money back any deal he makes will be satisfactory to me, because I know he will deal fair, and will do me a faivor to deal without me. If his people wont deal I can deal on the property here and will divide even with him and it wont be necessary for me to see him if he gives me the say authority that I have given him.

Your wire is nothing only a curiosity wire a man cant form any ide of any thing by it. I am under the impression that the Govenor got you to send it, to rush me out there.

Yours very respectfully,

(Signed) WM. SWEET."

Plaintiff's Exhibit No. 151E.

"ASTOR HOUSE,

New York, March 28-1902.

Hon. J. H. Richards,

Boise Idaho

Dear Sir:—

Enclosed note you can leave with Coffin if he is any way uneasy about the note signed by the Governor and myself. These people say they may want to take this up any day and I promised I would not transfer it for a while anyway. But it is as good as gold and if Coffin has it I can not get it back without making it satisfactory to him if he aint uneasy you can keep it with the rest of my papers. I dont think Kinkaid got that last 3000 from Read-

way. If not I am square with that Bank.

And if the Govenor makes any deal you can tell him to leave my money all with the Bank of Commerce. I dont know what the matter is out there have not heard from Kinkaid or the Govenor or yourself about the situation. The Govenor last letters was for me to come home and help him. I seen in a New York paper where a timber inspector was going to Idaho. Now if there is any thing rong and you and the Govenor cant protect me what could I do myself and if there isnt any thing rong I cant see why I should go to Idaho. Wish you would write me what you know.

Yours very Respectly,

(Signed) WM. SWEET."

Plaintiff's Exhibit No. 151F.

"ASTOR HOUSE,

New York, March 30-1902.

Hon. J. H. Richards

Boise Idaho

Dear Judge.—

Your faivor of the 24-Rēd contents noted. In-closed your letter to Mr Sweet you can see by the clipping that I think this is his letter, you might see Mr Coffin and if you havnt given him that note on the Liberal Company you had better and I have a small note in my papers I think that one with you which is guilt edge and can be collected any day on Mondell you had better give him that. I cant see why he should have any fears. I dont owe any body in the world over one hundred dollars out side

of your \$500.00 five hundred but Kelley and the Bank of Commerce. I have a \$5000.00 five thousand note on the Liberal with me to fix Kelley with. I expect it will be 3 or 4 weeks before I can go to Idaho and Mr. Coffin must not be uneasy for within 24 hours any time that I have or will be in Boise I can pay my own and the Governor joining note. Have heard from the Govenor and Kinkaid every thing is well. I will have very soon \$10,000.00 or Fifteen thousand dollars to loan for six months, wish you would see what the Bank of Commerce will pay on that kind of a lone. I am thinking I ought to get six % interest. Whether the Bank of Commerce will pay that or not any idle money I have will stay in their bank because they have acted like gentlemen with me and I want to assure them that no time have I overreached myself nor shant. I always can see where my money is coming from. I am confident Mr. Coffin has no fear now and hope you will write me how he feals, and if all right assure him that I have quit Borrowing and have nothing more to borrow for and am paying up my loans and dont expect to owe a man in the world in 3 weeks.

Your Brother did not say how much I owed him for his examination of that prospect.

Wish you would look over that letter from Charley Owens Brother and see if that note he wished to traid for Charlie's is good. Figur out the intrusts on both and if good will pay the difference in a few days if not wish you would write to him also send me his address, I believe he will pay that

note if I ask for it a few times and it is worth asking for. I will inclose a short note to inclose in your letter to him.

Have nothing more to say at present.

King Regards,

(Signed) WM. SWEET.

P. S.

I have told you in other letters that if the Governor made any turn on the timber and to wire me when it was placed in the Bank this wont be necessary I have given him full instructions.

Yours

(Signed) W. S."

Plaintiff's Exhibit No. 151G.

"ASTOR HOUSE,

New York, April 6-1902.

Hon. J. H. Richards

Boise Idaho

Dear Judge.—

Your faivor of March 31st Reed, contents noted. Evry thing seems to be all right on the timber deal, and I feel quite easy. I shant explain untill I see you any further than the Govenor got some of his friends to pay back our money and put up the amount of \$140,000.00 to secure all that timber and gives us six months to do it in, and get it in shape for a deal, carrying an intrust for us. This is the substance as there is to much detail to write any more about it. I was worried about that matter. My money had stoped on me. The facts are I just

saved myself from a reck and came out away a head.
Nothing further that I can think of at present.

Kind Regards,

(Signed) WM. SWEET."

Plaintiff's Exhibit No. 151H.

"ASTOR HOUSE,

New York, April 15-1902.

Hon. J. H. Richards

Boise Idaho

Dear Sir.—

Your wire was received a few days ago and letter today sayind you signed check. received all right, all satisfactory.

Will write again soon

Yours very Respectfully

(Signed) WM. SWEET."

Plaintiff's Exhibit No. 151I.

"CRAWFORD HOUSE,

Boston, April 25-1902.

Hon. J. H. Richards

Boise Idaho

Dear Sir.—

I am awfully disterbed about that timber transaction. I fear I signed papers that I ought not to have signed and to make it compleat you used that Power of attorney and put the money out of my hands, and I havnt a scratch of a pen from Steunen-berg. After he got me signed up good he quit me and turned his attention to you with the Power you held on me and never heard from him or you about the money. I wrote to him 10 days ago to put

\$5000.00 Coffin's Bank for me to check on and wire me so I could check it out and when I come to Idaho I would make all matters right. I have not had a word from him for a month. I am worring and can only say to many cooks spoils the broth, every time on me. After I thought I was puting my self in a hole I showed a friend your letter to me in which you say you showed the Gov. your Power and telling him you would execute papers if he got instructions from me. My friend ansered me a bright attorney would not sign anv thing to put me in a hole. I showed my contracts and we could see the Gov. or any body else out side of you could not get my money. this is all confidential. I am dun up in a hole so far as my Idaho intrusts are concerned and every thing is in Gov. hands and by law he can hold me for all time to come. If he is absolutely honest I am all right if not I am all rong. Just show him the letter when he goes into your office dont let him have it. destroy it after he sees it.

(Signed) W. S."

Plaintiff's Exhibit No. 151J.

"ASTOR HOUSE,

New York, April 29-1902.

Hon. J. H. Richards

Boise Idaho

Dear Sir.—

I feel a little better. I have just received a wire from the Gov. saying he deposited five thousand dollars to my credit in the Bank of Commerce at Boise. I drew a check on Mr. Cofin yesterday to Goodwin &

Rimbach for one hundred dollars and today to Mr. Kelley for five thousand. I will leave for Idaho very soon.

Yours very Respectfully

(Signed) WM. SWEET.

If I don't get a wire from him soon I will jump on the train and go out. I am awfully worried about my affairs out there and I hate to leave the East as my chances are extra good to make more money than I ever expected to see.

Dont you say one word to any body about this.

Yours very Respety

(Signed) WM. SWEET."

It is further stipulated that letter addressed to Hon. Frank Steunenberg, Caldwell, Idaho, purporting to be signed by William Sweet, and dated, New York, Mar. 25-1902, was dictated and signed by William Sweet and by him mailed to Governor Frank Steunenberg and received by Governor Frank Steunenberg in due course of mail.

Mr. GORDON.—We offer in evidence the letter which is the subject of the last above stipulation.

Mr. BUNDY.—The defendant objects to it as incompetent, irrelevant and immaterial.

(Letter marked Plaintiff's Exhibit No. 152.)

[Plaintiff's Exhibit No. 152 (Copy).]

The following is a copy of the letter:

“ASTOR HOUSE,

New York, Mar. 25-1902.

Hon. Frank Steunenberg,

Caldwell, Idaho.

Dear Sir:—

I have just received a wire from Judge Richards

saying it is necessary for me to be back there and when can I come?

I have written him a copy of the enclosed.

Now, Governor, if I must go back why I'll go, but I would not go back for two or three thousand dollars now for a week or two. I cannot see how only to say yes to what I have written. I can mention the amounts of money I think I'm in which you can see Mr. Kinkaid about and compare notes. The first amount is \$12,200.00 the second is \$7,500.00 note that we are together on and the third is the \$6,000.00 draft I sent you and the fourth is the \$3,000. that I wired to Kinkaid to draw (I do not know whether he drew it or not). Now I sincerely hope this matter can be fixed up without my going out there my money to be placed in the two banks, as I said before.

Yours very respectfully,

(Signed) WM. SWETT."

It is further stipulated that the papers produced from the land office, purporting to be timber and land sworn statement, final proof, cross-examination, of Gustave A. Link, and receiver's receipt and certificate issued to Gustave A. Link, are the identical papers signed by him and issued by the land office with reference to his timber and stone entry, with reference to which he testified, and the same stipulation applies to like papers of Ery A. Wilmot and Mary Link.

Mr. GORDON.—The complainant offers in evidence the papers that are the subject of the last above stipulation.

(Gus A. Link papers marked Plaintiff's Exhibit 69J to 69N inclusive.)

(Mary Link papers marked Plaintiff's Exhibit No. 70B to 70F inclusive.)

(Ery A. Wilmot papers marked Plaintiff's Exhibit No. 78F to 78J inclusive.)

It is further stipulated that the deeds signed by John F. Snow and Cleora M. Snow, running to George S. Long, dated January 15, 1904, were duly signed and executed by the grantors before Walter Swatke, on the date of the deed, and that the same was prepared by John Kinkaid, embracing the lands covered by the timber and stone entry of Cleora M. Snow.

It is also stipulated that Charles Balantine, unmarried, executed a deed to A. E. Palmer of the lands embraced in his timber and stone entry, on August 31, 1903, and that the deed was prepared by John Kinkaid.

Mr. GORDON.—Complainant offers in evidence the deeds embraced in the foregoing stipulation.

(Snow deed marked Plaintiff's Exhibit No. 1330.)

(Balantine deed marked Plaintiff's Exhibit No. 10G.)

It is further stipulated that any documents or papers referred to in the testimony of any of the entrymen who have heretofore testified may be offered in evidence at the close of defendant's case, and if otherwise materially competent and relevant will not be excluded upon the ground that the same do not constitute proper rebuttal evidence; and that any witness heretofore called may be recalled by

complainant at the close of defendant's case and further examined with reference to the subject matter of his or her evidence, subject to like objection, but without reference to the admissibility of such evidence as rebuttal testimony.

At this time court adjourned until one o'clock P. M., Wednesday, March 10, 1909.

(1:00 P. M., March 9th, 1909.)

[Testimony of Fred Brown, on Behalf of the Complainant.]

FRED BROWN, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Mr. Frederick Brown, is it?

A. Fred Brown.

Q. What is your occupation, Mr. Brown?

A. Assistant cashier of the Boise City National Bank.

Q. I will ask you if you have looked through the records of the Boise City National Bank to see whether Samuel Blandford, Bert T. Parker, Wilbert R. Reeves, Henry F. Benedix, Joseph Ehrmantrout, Jr., Thomas F. Kelley, had accounts at said bank during the years 1902 and 1903.

A. Yes, I have made examination.

Q. I will ask you to state whether or not, from such examination, Samuel Blandford had an account with said bank on February 10, 1903, or at any time within six months prior thereto.

(Testimony of Fred Brown.)

Mr. BUNDY.—That is objected to as incompetent, irrelevant and immaterial.

A. He did.

Mr. BUNDY.—Then I will withdraw my objection.

Mr. GORDON.—Q. When did Samuel Blandford have an account with said bank?

A. Before and at the time named.

Q. What was the account?

A. An open account, checking account.

Q. When was the account opened?

A. Well, in 1898.

Q. When?

A. In 1898; that was when the account was first opened.

Q. I will ask you if Bert T. Parker had an account with said bank on December 17, 1902, or at any time within seven months prior thereto.

A. He did not have an open account.

Q. What kind of an account did he have?

A. I will have to ask for information. You have that Bert T. Parker?

Q. Yes, sir.

A. And we have no Bert T. Parker on our books, but we have a B-u-r-t Parker, and I think that is the name.

Q. Well, explain what he had. You say you have no Bert T. Parker but you have a Burt Parker?

A. We have no Bert T. Parker, but we have a Burt Parker, to whom we issued a time certificate of deposit for \$600 on November 13, 1902; the same was

(Testimony of Fred Brown.)

cashed on December 16, 1902.

Q. I will ask you if Henry F. Benedix had an account with the Boise City National Bank on February 13, 1903, or at any time within seven months prior thereto.

A. I do not find any record of it; I did not find any record of it.

Q. I will ask you if Thomas F. Kelley had an account with the Boise City National Bank on December 17, 1902, or at any time within seven months prior thereto.

A. He had no open account, but I find that certificates were issued to him, and one cashed on the date mentioned.

Q. When was the certificate cashed on December 17th issued?

A. On September 4, 1904, for \$160.

Q. Did Joseph Ehrmantrout, Jr., have an account with your bank on December 15, 1902?

A. He did.

Q. I ask you what the last deposit of Mr. Ehrmantrout was, if you know.

A. Prior to that period?

Q. Yes.

A. An item for \$1900, credit for \$1900.

Q. When was that credit?

A. November 16, 1903.

Q. And what was it that was deposited?

A. Our records show it to be a draft of the American National Bank, St. Paul, in favor of Joseph Ehrmantrout, on the National City Bank of

(Testimony of Fred Brown.)

New York, for \$1900.00.

Q. And was there a check drawn on or about the 15th of December on that, 1903?

A. I find that checks were drawn on his account for \$824.50.

(Witness excused.)

[Testimony of Robert F. McAfee, on Behalf of the Complainant.]

ROBERT F. McAFEE, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. McAfee, you are the cashier of the First National Bank, Boise, Idaho, are you?

A. I am.

Q. I will ask you whether you have looked through the books of the said bank for the purpose of learning whether John H. Byro, William J. Marcum, John H. Rose, Edward J. Dockery, John J. Keane, Emma Bilderback, Joseph Sullivan, had accounts with your bank during the years 1902 and 1903.

A. I have.

Q. I will ask you if John H. Byro had an account with the First National Bank on July 11, 1902, or at any time within seven months prior thereto.

A. John H. Byro? I don't find any such account.

Q. Did William J. Marcum?

Mr. BUNDY.—I make the same objection to this;

(Testimony of Robert F. McAfee.)

it is incompetent, irrelevant, immaterial, and an attempt to impeach their own witnesses; I will let that stand to all this bank testimony.

Mr. GORDON.—Did William J. Marcum have an account with said bank July 9, 1902, or at any time within seven months prior thereto?

A. I don't find Mr. Marcum's name in the books at all.

Q. Did Edward J. Dockery have an account with said bank on December 22, 1902, or at any time within seven months prior to that date?

A. I don't find Mr. Dockery's name.

Q. Did John J. Keane have an account with said bank on January 16, 1902, or at any time within seven months prior to that date?

A. He did not, not that I can find.

Q. Did Emma Bilderback have an account with the First National Bank on January 28, or within any time within seven months prior to that date?

A. What dates?

Q. January 28, 1903.

A. Six months, you say?

Q. Yes.

A. No, we didn't find anything within that time—wait just a moment; what dates were those? Yes, she had an account.

Q. What was the account?

A. January 20, 1903, September 25, 1903.

Q. That is afterwards.

A. You said previous to that?

Q. Yes.

(Testimony of Robert F. McAfee.)

A. No, I don't find one—yes, she had one previous to that too, but not within the time stated.

Q. When was that?

A. , October, 1901.

Q. Then there wasn't any account of Emma Bilderback with the First National Bank between October, 1901, and January 28, 1903?

A. No, none that I find.

Q. Did Joseph Sullivan have an account with said bank on May 7, 1903, or at any time within six months prior thereto? I will ask you if he had an open account.

A. He didn't have a checking account at that time; he had certificates of deposit.

Q. Have you a notation of the certificates of deposit that he had with the bank?

A. He may have had more than one; I have one in particular that I have found, an \$800 certificate.

Q. Issued to him? A. Yes.

Q. When was it issued?

A. I think it was May 7th it was issued.

Q. And was cashed on what day?

A. May 8th.

Q. May 7th and 8th, 1903? A. 1903.

Q. And do you know how he obtained that certificate of deposit?

A. By depositing money and getting it, that is, by depositing \$800 or its equivalent.

Q. When you say deposit, you mean that he didn't open an account, but this certificate was given to him in place of opening an account.

(Testimony of Robert F. McAfee.)

A. The certificate of deposit is an evidence of indebtedness of ours to Joseph Sullivan, for \$800.

Cross-examination.

(By Mr. BUNDY.)

Q. Did you look up different people and see whether they had any certificates?

A. Yes; I didn't find any record at all.

Q. Did you look up to see if they made any loans on the dates given?

A. Yes, I didn't find any.

(Witness excused.)

[Testimony of M. P. Meholin, on Behalf of the Complainant.]

M. P. MEHOLIN, produced as a witness on behalf of complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. Meholin, you are the receiver of the Capital State Bank, at Boise, Idaho, are you?

A. Yes, sir.

Q. I will ask you if you have looked through the books of said bank for the purpose of learning whether or not Emma Lou Blandford, Andrew Campbell, Charles A. Walker, George S. Warren, Lena D. Wilson, Walter L. Wilson, Orlin R. Jaycox, Harry B. Noble, Henry Rics, Daniel P. Woodmore, Lewis K. Burns, Clifton C. Bliven, John J. Keane, Mary Starn, Caroline Alexander, Edward J. Phelps, Norman H. Young, John R. Gary, Jodie M.

(Testimony of M. P. Meholin.)

Ross, had accounts with said bank, or with the Capital State Bank, during the years 1902 and 1903?

A. You mean checking accounts, open accounts—that doesn't refer to certificates of deposit?

Q. I will ask you about checking accounts first.

A. No, sir, those names that you read, we were unable to find any checking accounts, during those dates.

Q. Now, those names I have read, did you find any accounts of loans or certificates of deposit?

A. Norman H. Young had a certificate of deposit we found on the books.

Q. For how much? A. \$475.

Q. When was it issued?

A. Issued April 14, 1902.

Q. And was it paid the same day?

A. No, it was paid, I think, the 28th of that same month; I wouldn't certify exactly on that, but shortly after it was paid.

Q. Now, were certificates of deposit issued to any of the other persons whose names I have read, during the periods I have read?

A. Not that I could find.

Q. And were loans made to any of those persons, through the bank? I will ask you if Clifton C. Bliven had a certificate of deposit issued to him during that period, and if so, when.

A. Yes, sir, he had a demand certificate.

Q. Do you know for how much?

A. \$410, I think.

Q. Issued April 16, 1903?

(Testimony of M. P. Meholin.)

A. Yes, according to the notations.

Q. Do your records show whether or not Charles H. Eagleson, or C. H. Eagleson, borrowed any money from the bank during that period?

A. Not that we could find on the records. Possibly it would be proper to state that Charles H. Eagleson is one of the firm of Eagleson & Son, Limited, who run quite an account there at that time, and, of course, there was checks and deposits, they had a good account there, and had all the time, and I understand that C. H. was one of that firm, but we didn't find anything personal on the records; Charles H., I think, is the way I looked the name up.

Cross-examination.

(By Mr. BUNDY.)

Q. You have had a little trouble up there in your bank, haven't you?

A. Considerable, yes, sir.

Q. You have been occupying the center of the stage here recently in a little matter of controversy between the Government and the man that had charge of the bank during that time; there has been a lawsuit here, the Government against the gentleman who had charge of the bank during that period?

A. The State, yes, against Mr. Neal.

Q. And the charge was that he was doctoring the books and forging papers, and so forth?

A. I believe there was one charge of that kind, mostly forgery.

Q. Also charged with falsifying the records?

A. Yes, I think so.

(Testimony of M. P. Meholin.)

Mr. GORDON.—Q. Mr. Neal was recently acquitted of that charge? A. Yes, sir.

Mr. BUNDY.—He is still charged with falsifying the records?

A. He hasn't been tried upon that charge, I believe.

(Witness excused.)

[Testimony of William Balderston, on Behalf of the Complainant.]

WILLIAM BALDERSTON, produced as a witness on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. I will ask you if you have with you the records of the land office showing the entries made under the timber and stone act.

A. The original entries?

Q. Yes, sir.

A. Yes, this is the book of original entries.

Q. I will ask you if you see statement No. 310, on page 17 of that book. A. Yes.

Q. I will ask you to read that entry.

A. Sworn Statement No. 310, filed December 26, 1901, by William J. Wills, south half of the northwest quarter and north half of the southwest quarter, section 33, township 8 north, range 5 east.

Q. I will ask you to read the next one.

A. Sworn Statement No. 311, made December 26, 1901, by Mary J. Wills, for east half of the south-

(Testimony of William Balderston.)

west quarter, and southeast quarter of the northwest quarter, and lot 3, section 1, township 7 north, range 5 east.

Q. And that indicates that the persons that you have named, on the dates you have read, filed sworn statements or made application to purchase?

A. What we call filing sworn statement.

Q. Filed sworn statement of the lands you have read the description of? A. Yes.

(Witness excused.)

[Stipulations Re Exhibits, Testimony, etc.]

It is hereby stipulated by and between counsel, in open court, that the exhibits heretofore introduced in evidence, referring to timber and stone entries, were made out by the following persons:

John Kinkaid wrote the deed in the following exhibits: 10, 18, 19, 26, 27, 28, 29, 33, 34, 35, 36, 37, 38, 39, 46, 47, 48, 49, 50, 59, 60, 62, 66, 67, 69, 75, 78, 84, 87, 88, 92, 93, 95, 98, 107, 109, 110, 111, 112, 114, 127, 128, 136, 137 and 138;

John Kinkaid wrote the non-mineral affidavit, the sworn statement, and notice of publication in exhibits 21, 31, 42, 43, 44, 51, 52, 53, 55, 56, 57, 63, 64, 65, 71, 74, 76, 77, 79, 80, 81, 82, 89, 90, 94, 96, 97, 100, 101, 103, 104, 105, 106, 108, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 129, 130, 132, 133, and 134.

Louis M. Pritchard wrote the deeds in the following exhibits: 1, 2, 16, 17, 21, 22, 32, 40, 41, 45, 58, 91, 115, and 118.

Louis M. Pritchard made out the sworn statement, non-mineral affidavit, and notice for publica-

tion in exhibits 87, 88, and 114.

John I. Wells made out the sworn statement, non-mineral affidavit, and notice for publication in exhibits 16, 17, 19, 22, 26, 29, 30, 32, 36, 40, 41, 45, 58, 62, 66, 67, 69, 70, 86, 91, 92, 93, and 113.

Norman H. Young made out the sworn statement, non-mineral affidavit, and notice for publication in exhibit 139.

It is stipulated that there shall be added to the stipulation made March 4, 1909, relative to the checks, stubs and bank account of Frank Steunen-berg, personal and agent, the following:

This stipulation is not intended as an admission by either party that the notations on stub or check correctly indicate the purpose for which such check was actually used.

It is stipulated that the following is to take the place of the stipulation made on the record relative to the same subject on yesterday, March 9th, to wit:

It is, in open court, stipulated by and between the parties to this cause, in reference to the several typewritten papers purporting to be stenographic reports of statements made by divers of the witnesses heretofore examined on behalf of the complainant herein to and before N. M. Ruick, United States Attorney, Miles S. Johnson, Assistant United States Attorney, W. S. Wade, Special Agent of the General Land Office, Edward E. Garrett, Receiver of Public Moneys at Boise, and M. C. Burch, who is designated in the testimony as Judge Burch, or some of the said persons, which typewritten papers have been used, referred to, and read from by counsel for the complainant in the examination of the said divers wit-

nesses, that such portions of the said statements as appear by this record to have been read to the several witnesses and concerning which such witnesses appear to have been interrogated, shall be deemed to have been offered in evidence by the complainant and to have been proved as part of the complainant's case, in the same manner and with the same proof and effect as if the stenographer or stenographers taking such statements and typewriting the same had testified in this cause that such statements are true and correct reports of statements made by the several witnesses by whom such statements respectively purport to be made;

And it is further stipulated that those portions of the testimony taken on the trial of William E. Borah in the case entitled the United States vs. John I. Wells et al., which have been, by counsel for the complainant in this cause, read from the stenographic report of the testimony in the said trial to divers of the witnesses heretofore examined in this cause as being portions of the testimony given by such witnesses in the said trial, and concerning which the said witnesses have been interrogated, are correct extracts from the said stenographic report, and shall be deemed to have been offered in evidence by the complainant in this cause, and to have been proved with the same proof and effect as if the stenographer who took the testimony in the said trial had testified in open court that the said portions of testimony had been given at the said trial by the several witnesses by whom such testimony purports to have been given.

This stipulation is not to be construed as an admis-

sion by either party that the said statements and testimony, or any part thereof, are true or are false, and the said statements and testimony are admitted in evidence subject to the objections thereto interposed by the defendant on the ground that the same are incompetent, irrelevant, immaterial, and constitute an attempt on the part of the complainant to impeach its own witnesses, the sole purpose and effect of this stipulation being to dispense with the calling of witnesses to prove that such statements were made and such testimony given and that the various papers hereinbefore mentioned and used in the examination of the witnesses aforesaid are correct reports of such statements and such testimony.

It is further stipulated that the defendant, the Barber Lumber Company, will produce at Eau Claire, Wisconsin, for examination by the solicitors for the complainant, all the books, accounts, records, checks, stubs, drafts, and correspondence of the said company, which relate to the acquisition by the said company of all the lands described in the bill of complaint filed in this cause, and which exhibit the accounts, correspondence, and transactions of the said company relating to the said lands, as well before as after the emanation from the United States of the titles to the said land, such solicitors to have for that purpose access, at reasonable hours and for reasonable periods to the office in which such books and documents are kept, or the said books and documents to be deposited in the office of the company's solicitor, or of the officer taking the testimony, at Eau Claire, and to be accessible to complainant's

solicitors at such times and for such periods as may be reasonably necessary for a satisfactory examination thereof.

It is further stipulated that testimony in this cause may be taken by either of the parties hereto before the special examiner appointed for that purpose by the Court, or, in case of the absence or disability of any such special examiner, then before some United States Commissioner or notary public, at the places following, on the dates respectively set opposite the names of such places:

At Seattle, Washington, on March 12, 1909;

At Portland, Oregon, on March 25, 1909;

At San Francisco, California, on March 22, 1909;

At Reno, Nevada, on March 26, 1909;

At Los Angeles, California, on March 31, 1909;

At Saint Paul, Minnesota, on April 12, 1909;

At Eau Claire, Wisconsin, on April 25, 1909;

—the taking of testimony at each of the said places to be commenced on the day above indicated, or as soon thereafter as counsel can reach such place, and to continue from day to day until all witnesses offered at that place by either party shall have been examined.

At this time adjournment was taken until ten o'clock A. M., Thursday, March 11, 1909.

[Proceedings Had March 11, 1909.]

Court opened, pursuant to adjournment, at ten o'clock, A. M., Thursday, March 11, 1909, whereupon a stipulation, dated March 11, 1909, signed by the solicitors for the parties hereto, to which is attached eighty-seven sheets, is offered and received in evi-

dence, marked Exhibit No. 153.

It is further hereby stipulated that the papers produced by complainant, being the timber and stone entry papers of Dean West, were signed by him, and filed in the land office, and will be received in evidence with the same force and effect as though identified by Mr. West.

Mr. KEIGWIN.—Complainant offers the entry papers in the entry made by Dean West, including the sworn statement, testimony of claimant on final proof, the register's certificate, and the receiver's receipt, and the patent.

(Papers marked Exhibit No. 154.)

At this time court adjourned, subject to notice.

Pursuant to notice, at ten o'clock A. M., Tuesday, June 1, 1909, the taking of testimony was resumed, the Examiner and counsel being present, Peyton Gordon, Esq., and C. A. Keigwin, Esq., appearing on behalf of the complainant, and C. T. Bundy, Esq., on behalf of defendants.

[Testimony of Frank Martin, on Behalf of the Complainant (in Rebuttal).]

FRANK MARTIN, produced as a witness on behalf of the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Frank Martin?

A. Yes, sir.

Q. Mr. Martin, what is your occupation?

A. Attorney at law.

Q. Where do you reside?

(Testimony of Frank Martin.)

A. Boise, Ada County, Idaho.

Q. And how long have you resided at Boise?

A. Since August, 1892; I had lived in this vicinity for a good many years before.

Q. Since August, 1892? A. Yes, sir.

Q. Where did you reside prior to that time?

A. I lived at Caldwell.

Q. That is a few miles from here?

A. Thirty miles west of here; and I had lived at Emmett and at Star, Idaho, in this county, about sixteen miles west of here. I had lived in these various places since 1886.

Q. And how long have you practiced law in the State of Idaho?

A. Since August, 1892.

Q. Have you held any state positions, or official positions under the state since you have been living in Idaho?

A. Yes; I was attorney general of the State for one term.

Q. During what years? A. 1901 and 1902.

Q. And under whose administration was that?

A. Frank Hunt was governor.

Q. How long had Frank Steunenberg's term as governor expired prior to your election?

A. Governor Steunenberg's term expired after my election and at the time I took office.

Q. You were of the succeeding term?

A. Yes.

Q. Do you know Edward Abel Hunter?

A. Yes.

(Testimony of Frank Martin.)

Q. Do you know Arthur Anderson?

A. Yes.

Q. James T. Ball? A. Yes.

Q. Harvey H. Wells? A. Yes.

Q. State when you first met them, and the circumstances, please, under which you met them.

A. I first met them, I think, on the 9th day of December, 1903.

Q. 1903?

A. Yes; that is as I remember it; the 9th day of December, 1903, they came to my office in the Sonna building, in company with John I. Wells, to consult me about a hearing they had coming on, or perhaps coming on for hearing that day, or had come on for hearing that day and been adjourned over for a day for them to procure counsel, and their purpose was to consult me in regard to representing them, in connection with Mr. Worthman, who had previously been employed in that hearing.

Q. That was your first acquaintance with them?

A. No; I think I had known Mr. Ball before.

Q. Had Mr. John I. Wells spoken to you about these cases previous to their coming to your office?

A. I wouldn't be positive whether he spoke to me the day before about it or not; I am rather inclined to think that he did, but I wouldn't be positive about that.

Q. What were these cases that you were to represent them in—where were they?

A. In the United States Land Office here in this city.

(Testimony of Frank Martin.)

Q. And were they contest cases arising under entries that had been made under the Timber and Stone Act?

A. Yes, they had each made an entry under the Timber and Stone Act, and there had been an order by the Commissioner's office directing a hearing, and this was on that hearing.

Mr. KEIGWIN.—Q. The order of the Commissioner was based upon a report of the special agent to the effect that the entries were fraudulent or unlawful?

A. Yes, I so understand it.

Mr. GORDON.—Q. Don't you remember that Mr. John I. Wells came to your office before these gentlemen came to see you, and stated, in effect, that they had a contest on hand, and that he came to see you with the view of securing an attorney for them?

A. It rather appears to me that that is right—it has been a long time ago—that he spoke to me the day before about it and told me that they were coming to town, and told me that they had an attorney, and that he was engaged in other business and wouldn't be able to serve them for a few days, and they would have to get somebody else, and asked me if I would take employment in the matter, and told me he would bring them up; that is the way I recollect it, but, as I say, it has been so long ago that I might possibly be mistaken, but it seems to me that is the way it was.

Q. And you represented them at that hearing, and after the hearing did you do anything further in the cases?

A. Yes; I prosecuted an appeal in the cases to the

(Testimony of Frank Martin.)

Commissioner, and then from the Commissioner to the Secretary's office.

Q. And the Secretary of the Interior held the entries for cancellation?

A. Yes; the entries were finally canceled.

Q. And did you have anything to do with the entries, or the land that had been entered by these four gentlemen, after the decision of the Secretary of the Interior?

A. Yes, after the decision by the Secretary of the Interior, there was thirty days in which to apply for a review. I took from these gentlemen a relinquishment of these entries, together with a power of attorney, to apply for the return of the money which they had paid the Government for these lands, which had never been converted into the Government treasury, were still being held privately in the hands of the receiver, and this application was based on previous conferences I had had with the General Land Office in Washington, and I made that application for a return of the money. I also filed these relinquishments, permitting other parties to take the land, and received a compensation for doing so.

Q. How did you secure these relinquishments from these four gentlemen? Did you go to see them, or write them, or what?

A. I went to see them; I went up to the Basin, where they were.

Q. With whom did you go?

A. With Mr. John I. Wells.

Q. That is the gentleman who is present here, is it?

(Testimony of Frank Martin.)

A. Yes, he is sitting back of the railing here.

Q. And you didn't file these relinquishments with the land office until after you had negotiated with some other persons to make entries on this land which had previously been relinquished. Is that correct?

A. Why, the circumstances were these: When I returned with those relinquishments, the main purpose of taking them was to try to get this money back, this \$1600 which they had paid for these entries. I had a conference with Mr. Garrett, the receiver, and I thought from my conference with the Commissioner's office in Washington that the money would be returned to me without question; in fact the acting commissioner had so stated to me, that he would make an order to that effect, and the law to me seemed to be plain that they were entitled to it back, and I thought Mr. Garrett would pay it over to me, but I found that Mr. Garrett took a different view, and he insisted that the Government had a right to keep the money, and that he would refuse unless he was ordered to by the Secretary of the Interior. I took the relinquishments to the office with the intention of filing them and getting this money back, so when I found out that he wouldn't give me the money back I didn't file the relinquishments at that time, but a few days later, and in the meantime the parties arranged to take the land.

Q. Now, state how the arrangement was made.

A. How the arrangement was made for them to take the land?

Q. Yes, name them, please.

(Testimony of Frank Martin.)

A. One of the parties was my brother's wife, Mary J. Martin—I had these, of course, and upon their filing in the land office the land would be subject to entry; at least that was my view of it; the receiver held different when they were filed—so she was one of the parties, and there was a Mr. E. J. Phelps and his wife wanted to take a timber claim, and she was another of the parties.

Q. Edward J. Phelps didn't take one?

A. No, it was Eleanor A. Phelps, the wife of E. J. Phelps, but he spoke to me about it, and told me his wife would like to have a timber claim, and asked me if she could file on one of these pieces, and that is the way she came to file; and Mr. Leon Simpson came to my office and said he understood that I knew of some tracts of land, or had some tracts, that could be entered, and asked me if he could get one.

Q. Who was the fourth one?

A. The fourth was Nettie Weston, a niece of mine.

Q. Is she Mary J. Martin's daughter?

A. Yes.

Q. Mr. Martin, hadn't you disposed of one of these relinquishments to a son of your brother Thomas Martin?

A. Yes, he offered the filing previous to the time Mrs. Weston did. The first time, these filings were not accepted when they were offered, Mr. Garrett holding that the relinquishments didn't clear the record so as to make the land subject to re-entry, so his entry was not accepted, and then at the time the en-

(Testimony of Frank Martin.)

tries were accepted, Mrs. Weston filed on the tract that he had made application for.

Q. What was his name? A. L. D. Martin.

Q. And do you know who procured Mr. Leon Simpson to come to you? A. No.

Q. And after these four people, Eleanor A. Phelps, Mary J. Martin, Nettie Weston, and Leon S. Simpson had entered the land and proved up, do you know what became of the title that they acquired?

A. Yes; I bought them all—all except Mary J. Martin's—I bought the other three.

Q. And have you the title to those three claims now? A. Who has title to them?

Q. Yes.

A. I don't know who has title to them now; I sold them to the Barber Lumber Company.

Q. Do you remember what year it was that you sold them to the Barber Lumber Company?

A. Yes, I think it was in November, 1906.

Q. Now, Mary J. Martin's claim, what became of that?

A. I sold that to the Barber Lumber Company at the same time I sold the other three.

Q. Now, you purchased the claim of Leon S. Simpson, I understand? A. Yes, sir.

Q. And do you remember whether you paid cash for that, or how was that arranged?

A. I paid cash—I paid him \$200 at the time I made the deal with him, which I think was in the last part of August, 1906, and he put a deed in escrow in

(Testimony of Frank Martin.)

the Capital State Bank, and some week or ten days afterwards, which would be in September, 1906, the first part, I paid the other \$800 to the Capital State Bank and took out the deed.

Q. Did I understand you to say that the deed was held in escrow until you made the final payment?

A. Yes, which was not long, maybe a week or ten days.

Q. Wasn't it something over a month?

A. No.

Q. And did you make the final payment for the land that you purchased from Mr. Simpson before you made arrangements to sell it to the Barber Lumber Company?

A. Yes, before I ever talked to any of them, or any of them to me, about it.

Q. Did Ball, Anderson, Hunter, or Wells ever pay you for your services in representing them before the land office in these contest cases?

A. No, not otherwise than my agreement with them, when they gave me these powers of attorney and these relinquishments, was that I was to collect this money, which I felt certain of getting at that time, and retain half of it, which would have been \$800 of the \$1600, returning to each of them \$200, and my agreement was that that would square the account between us.

Q. Did you have any talk with these gentlemen at the time they were at your office about whether they should pay you for your services?

A. Yes, sir.

(Testimony of Frank Martin.)

Q. Did you have any arrangement as to what they were to pay you?

A. Yes, I told them at that time that I would charge them \$100 apiece. Of course that contemplated a hearing in the land office, and neither they nor I contemplated such a hearing as it resulted in; we didn't expect to devote so much time to it.

Q. When you had this first talk with Mr. John I. Wells about these contest cases, was anything said at that time about your fee in the matter?

A. Nothing was said at that time about my fee or compensation.

Q. Did you ever have any talk with John I. Wells about your fee in the matter?

A. He was with them at the time I talked with them about it in my office, and he told me that they would be able to pay me, that these men would be able to pay me.

Q. Did he tell you that he would get the money for you?

A. He told me that he would assist me in getting the money from them; he told me that he would look after the matter; he seemed to be acting as a kind of a friend to them, and was with them, and he didn't promise to pay me, but he said that they would be in a position to pay me, and that he would kind of look after it.

Q. Were you acquainted with Governor Frank Steunenberg during his lifetime?

A. Yes, sir.

Q. Intimately acquainted with him?

(Testimony of Frank Martin.)

A. Yes, sir.

Q. And do you know whether he had any interest in these contest cases that have just been referred to, or about which you have been testifying?

A. I only know what he told me.

Q. What did he tell you?

A. He told me that he had none; he was interested, he said, in the result of the trial, he was very much interested in what the decision should be, but he had no interest whatever, directly or indirectly, in the claims involved in the contests.

Q. Do you know what prompted him to make that statement to you?

A. Why he made the statement to me?

Q. Yes.

A. Yes; I was discussing the cases with him.

Q. There was quite a large record in those cases, was there not? A. A very large record, yes.

Q. And did you procure a transcript of that record for Governor Steunenberg? A. I did.

Q. And did Governor Steunenberg pay for the transcript of that record? A. Yes.

Q. And did he pay all the expenses of the appeal?

A. There was no expense attached to the appeals, Mr. Gordon.

Q. The record.

A. Well, I didn't have to have the record in order to take the appeal; I could have used, and which is the usual custom, I could have used the copy of the evidence which was filed in the land office for taking the appeal, so it wasn't necessary to have this record

(Testimony of Frank Martin.)

to take the appeal. However, I did use that copy of the evidence to make my briefs from in taking the appeals, because it was in my office, and was handier than to go to the land office.

Q. Do you know how much that record cost?

A. No, I can't remember the exact amount.

Q. Do you know where you received the money with which to pay for this record?

A. Yes; I drew a draft on Governor Steunenberg for it.

Q. I show you draft dated January 16, 1904, signed Frank Martin, for \$193.65, on Frank Steunenberg, Agent, at the Commercial Bank of Caldwell, Idaho. Is that the draft that you drew on Governor Frank Steunenberg for the amount which you paid for the record in these cases? A. Yes.

Q. And the draft was honored by Frank Steunenberg, was it not?

A. I received the money from that draft.

Q. You deposited that to your credit in the First National Bank of Boise, did you?

A. I am not just sure now; I had accounts in the First National Bank, and also in the Capital State Bank, and whether I deposited that in the First National Bank I don't remember.

Q. This draft was drawn in favor of the First National Bank of Idaho.

A. That is very likely the way it was then; I received the money anyhow.

Q. You received it in the regular course, after you drew this draft you heard nothing more from

(Testimony of Frank Martin.)

it?

A. Yes, I heard nothing further from it; I had previously paid out the money.

Q. How did you happen to draw on Frank Steunenberg as agent?

A. I had been told to do that.

Q. By whom?

A. Well, I am not absolutely clear, but probably the Governor himself.

Q. Do you know anyone else that could have told you that, or that would have been likely to have told you that?

A. More likely the Governor told me.

Q. Are you sure that the Governor told you to draw on him as agent, or John Kinkaid?

A. If Kinkaid told me, and that was what I was in doubt about, if Kinkaid told me, I went to Kinkaid and asked him something about this money, that is, where Steunenberg was, and told him I wanted the money perhaps, or something, and he might have told me to draw on him as agent, but it might have been the Governor told me himself; the Governor was here in town early in January, it was after I had paid this bill, and I think probably he told me at that time to draw on him as agent for the amount.

Q. Did you ever discuss these contest cases with John Kinkaid?

A. No; not to any extent; if I ever did it was to ask him if he knew anything about them, or something of that kind, at the time of the hearing, because I wanted to find out as much as I could about them, and his name was being used quite freely in the evi-

(Testimony of Frank Martin.)

dence, and it is possible that I went to him and asked him if he knew anything about them; if I did, that was as much as I ever asked him.

Q. Mr. Harry S. Worthman was retained in these cases with you? A. Yes.

Q. Did you know that Harry S. Worthman had been retained by John Kinkaid?

A. No, I didn't.

Mr. GORDON.—We offer in evidence the draft that has been identified by the witness Frank Martin, and desire to read the same into the record:

“First National Bank of Idaho, Boise, Idaho, January 16, 1904. Pay to the order of First National Bank of Idaho \$193.65, One Hundred Ninety-three 65/100 Dollars, To Frank Steunenber, Agent, Commercial Bank, Caldwell, Idaho, value received, and charge to account of Frank Martin.” On the front page is the stamp of the Caldwell Banking & Trust Company, Limited, Caldwell, Idaho. Paid January 18, 1904. On the back is the stamp, “Pay to the order of yourself, First National Bank of Idaho. George F. Redway, Cashier.” The paper is marked “Complainant's Exhibit Frank Martin No. 1.”

Q. Did I ask you, Mr. Martin, at whose direction you procured the appeal to the Commissioner of the General Land Office in these cases?

A. No, I think you didn't ask me that question.

Q. I will ask you now, who did direct, who did talk to you or suggest to you the making of this appeal?

A. I talked the matter over with Mr. John I. Wells, and I talked the matter over with Abel Hun-

(Testimony of Frank Martin.)

ter, also with Jim Ball, and as a result of these conversations I took the appeals, this appeal to the Commissioner.

Q. Now was it at the instance of Mr. Hunter or Mr. Ball or Mr. Wells that you took these appeals?

A. Well, you might say all three, and I am as much to blame for the appeals being taken as either of them. The conversation was this: That I felt that there had been no evidence worthy of consideration at all introduced on the part of the Government in those cases; the evidence that the Government introduced that they claimed showed fraud seemed to me to be absolutely silly, and I so told these men, and that I thought the Commissioner would reverse them; I thought the local officers were prejudiced and had acted unfairly, hadn't given the cases due consideration at all, and I advised the appeals, and they said they thought there was a chance to have them reversed, they felt the same about it as I did—if there was a chance to have them reversed, to go ahead and take an appeal. There was no expense involved in taking the appeal, except my labor in preparing the notice of appeal and brief, and I had some pride in having my view of the case sustained, if it could be, and so, as a result of these conversations, I appealed.

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. Martin, what, if any other, State office have you held, other than Attorney General for one term?

(Testimony of Frank Martin.)

A. I was appointed member of the State Board of Regents at one time, for, I believe, it was a six year term, vice-president of the Board; I think I resigned at the end of two years and left the Board. I was also a member of the Idaho Code Commission, ex officio chairman of the Commission for the last two years.

Q. Mr. Martin, you testified that the first time you saw Anderson, Ball, Hunter, and Harvey Wells relative to these appeals was on or about the 10th of December, 1903. These appeals were just about coming on for hearing at that time in the land office, were they not?

A. Yes, I think it was on the 9th; this is the way I remember it: That the matters had been set for hearing on the 9th; that Mr. Worthman had come to the land office, as I learned afterwards, and asked to have them continued over for the day, because he couldn't appear, and it was during that day of the 9th that I had this talk with these parties, that they came to me.

Q. Up to that time, or prior to that time, had you known anything about these entries, or the fact that these men had made entries?

A. No, not unless the evening before—it runs in my mind that the evening before that, Mr. Wells had spoken to me and said they were here in town, or would be in town, and if I was willing to take up the cases he would bring them up to my office.

Q. Prior to that did you have any knowledge of the fact that these gentlemen had any claims at all?

(Testimony of Frank Martin.)

A. No, sir.

Q. Had you, up to that time, had any talk with Mr. Kinkaid about these matters? A. No.

Q. Or with Governor Steunenberg?

A. No.

Q. Or Wells, or anyone else?

A. No, none whatever.

Q. Did these four gentlemen come to your office with John I. Wells, pursuant to this arrangement?

A. Yes.

Q. And at that time were you retained by them as their attorney in these cases? A. Yes.

Q. And it was at that time that the arrangement was made that you were to be paid for your services \$100 by each one of them?

A. By each one of them, yes, \$400 in all.

Q. You have testified that you had some talk with Governor Steunenberg with reference to these contest cases, in which he stated that he had no interest in these particular claims. Will you please state what, if anything, he said as to why he was interested in the outcome or the rulings which the land office might make?

A. He told me that, acting for the Barber Lumber Company, he had either bought or caused to be bought large numbers of timber and stone entries in that section of the country, on final receipt, was the word he used, and he had been advised by his attorneys that that was a perfectly legal way of purchasing the land; after the party had made proof and had his final receipt, before patent had issued,

(Testimony of Frank Martin.)

he had bought these claims, or caused them to be purchased, took the title, that they were being held up in Washington, these patents were not being issued, that the question of land frauds was being agitated all over the country, that the then Secretary of the Interior seemed to be thoroughly imbued with the idea that the people of the west were committing land frauds, and while he felt confident that none of the entries that they had purchased had been tainted with fraud in any way, that he felt that if these entries were held fraudulent, after the hearing which was then being held, or to be had, it would cause a general investigation into those entries, and would probably indefinitely hold up their patents on the claims they had bought for several years, and that that would retard the progress of starting the mill. It seems that the head of the Barber Lumber Company, Mr. John Barber, according to his statement, had told him that in buying these claims nothing must be bought except where the title was absolutely good, and that they weren't going to put any great amount of money into the mill or get the plant ready to start until they had the patents for the claims. That was the statement he made to me, and he was very anxious that the mill should start, and that everything should be all right; a good deal of this buying had been done under his supervision.

Q. What did he say, if anything, with reference to his interest in these particular claims?

A. Absolutely none whatever; neither he or the

(Testimony of Frank Martin.)

Barber Lumber Company had any interest in these particular claims.

Q. How did you come to draw on Governor Steunenberg for \$193 in payment of transcript of the evidence, and how and under what circumstances did you incur that expense for him?

A. This conversation that I have just related came about in this way: After I had been employed by these men, they told me that—I got the information possibly from them and John I. Wells together—that the charge was that they had made these entries in the interest of Wells and Kinkaid, John Kinkaid and John I. Wells, for the purpose of turning over to the Barber Lumber Company, or something of that kind—they were rather vague as to just what the special agent's charge against them was—and, as I recollect it—I wouldn't be sure about this part of it—I went to Mr. Kinkaid and ask him if he knew anything about it—that was before the hearing began—if he knew anything about them, or had had anything to do with them, and he said he hadn't, he knew the parties, but knew nothing about the claims, except that he believed they were being taken in good faith, and that he thought the claims were clean and all right, and as to the charge of fraud, he didn't think there was any reason why there should be. My recollection is that I saw Governor Steunenberg that evening in the Idanha Hotel and asked him about them, and he said he knew nothing about them, knew that such charge had been made, but knew nothing about these particular entries, had

(Testimony of Frank Martin.)

absolutely no interest in them at all, the Barber Lumber Company, had absolutely no interest in them at all, then went on to tell me that he was interested in the result, and was very anxious, and hoped very much that the claims would not be held fraudulent, because he was afraid it would have the effect I have testified to, in regard to holding up patents on the claims he had bought, and then said to me that he would like to buy a copy of the evidence, and asked me if I could get him a copy, and I said yes, I could, if he would pay for it, and he said, "How much do you suppose it would be," and I said, "Perhaps \$25," and he said, "Well, order a copy and I will pay for it," so I ordered the stenographer to make an extra copy.

Q. And was this draft for \$193.65 which has been offered in evidence to reimburse you for moneys paid to the stenographer for the extra copy ordered, as you have stated? A. Yes.

Q. Now, to refresh your recollection a little, do you recall that after you paid out this money you had a talk with Governor Steunenberg at the depot, just as he was catching the train, and asked him to pay this amount, at the time he told you to draw on him?

A. I remember his being here in January.

Q. I got it in my head some way that he was leaving on the train.

A. I very frequently was at the train when he came here and when he went away, and I remember his being here early in January, and I remember—I

(Testimony of Frank Martin.)

am not just absolutely positive—but I think he told me to draw on him, as agent.

Q. And the amount was considerably in excess of what your original estimate was? A. Yes.

Q. A larger record, in other words, than you supposed it would be?

A. When we began the trial of the case, I supposed it would last four or five days, and instead of that, it lasted twenty or twenty-five days.

Q. Now, Mr. Martin, were you ever paid, or promised payment, by Governor Steunenberg or the Barber Lumber Company, or anyone assuming to act for them, for any of your services in the original contest cases, or on the appeals?

A. No, I never was.

Q. Were you ever paid by Governor Steunenberg or the Barber Lumber Company, or anyone acting, or assuming to act, for them, for your services in those matters? A. I never was.

Q. You testified that you procured relinquishments from these four parties, and afterwards this land was located upon by other people. I will ask you as to whether or not you sold the relinquishments that you procured to these other people, so that they could file on them?

A. Yes, you might call it that; they couldn't file on the land unless the relinquishments were filed in the land office, and I held them in my possession.

Q. And you held those relinquishments of those four claimants out of which to get your pay?

A. Yes, I got \$100 apiece from those people for

(Testimony of Frank Martin.)

filing the relinquishments.

Q. Mr. Martin, were you ever paid by anybody for your services in those contest cases any sum of money whatever, other than the \$400 which you realized from the relinquishments?

A. That is all the money I received for it.

Q. Were you ever promised any additional money, other than the half you were to get for collecting the money? A. No.

Q. Were you, in appearing before the land office in those contest cases, acting for the Barber Lumber Company?

A. I was not; I wish I had been, because I would have got more pay for it.

Q. Were you acting for Governor Steunenberg?

A. I was not.

Q. Were you acting for John Kinkaid?

A. I was not.

Q. Were you acting for John I. Wells?

A. No.

Q. Were you acting for anybody other than the four claimants, Arthur Anderson, Ball, Hunter, and Wells? A. No, I was not.

Q. Did you ever have any consultation with Governor Steunenberg in which he assumed to advise or direct you to take any appeal in those cases?

A. No.

Q. Or with John Kinkaid? A. No.

Q. Were the appeals taken by you, Mr. Martin, in any way other than the usual course between attorney and client, when you advised that such ap-

(Testimony of Frank Martin.)

peals be taken? A. Just in the usual way.

Q. As far as you know, were Mr. Barber, Mr. Moon, or any officer or agent of the Barber Lumber Company, cognizant of the fact that appeals were taken?

A. If they knew it, I knew nothing of it.

Q. Mr. Martin, you have testified to the four persons who afterwards entered the lands which were relinquished by the four claimants whose claims were contested, namely, Mrs. Mary Martin, Mrs. Nettie Weston, Mrs. Phelps, and Mr. Simpson, and that you afterwards bought the claims from them, and afterwards sold them to the Barber Lumber Company. At the time you bought those claims from those parties did you know to whom you were going to sell them? A. No.

Q. At the time you bought the claims from those parties had you had any talk, conversation, or correspondence, with any official or agent of the Barber Lumber Company, with reference to procuring those claims for them? A. No, I had not.

Q. Were you in any manner, directly or indirectly, acting for the Barber Lumber Company, in the purchase or acquirement of those lands?

A. I was not.

Q. Did the Barber Lumber Company have anything whatever to do with procuring, Mr. Simpson, Mrs. Phelps, Mrs. Martin and Mrs. Weston to locate upon those lands? A. Absolutely nothing.

Q. Will you state briefly when and where, and the circumstances of the transactions and negotia-

(Testimony of Frank Martin.)

tions between you and the Barber Lumber Company which led to your sale of those lands to them?

A. I think it must have been in the latter part of September, 1906—it was at the Republican county convention here in this city that fall—I went into the Pinney Theatre, where they were holding the convention, and sat down on a seat in one of the back rows, and I noticed after I sat down that Mr. Chapman, manager of the Barber Lumber Company here in the city, was sitting at my side, and the Republicans were having quite a hot convention, so we sat there and discussed the result of the convention, and finally he said to me, “What are you going to do with those four timber claims you own up there in the Basin?” And I said, “I am going to keep them.” He said, “What will you take for them?” And I said, “I will take \$6,000 for them,” and he said that was too much; I think he offered me \$4,500 or \$4,800 for them—I forget which now—and we talked about it awhile, and during a lull in the convention proceedings; and the convention started up again. and nothing more was said about it at that time. After that I negotiated with Mr. Chapman again in regard to it; he came to my office and told me that the Barber Lumber Company held everything up there except those four claims and he would like to have them just to clean up the ends, and he would pay me more than they were worth for them; and I told him I knew that they were worth a great deal more than I was asking for them, \$6,000, as far as that was concerned, and I didn’t need to sell them, and I would

(Testimony of Frank Martin.)

just as soon hold them, and we had quite a time; I think he raised his offer to \$5,000 at that time; and nothing more was done; and I tried then—I negotiated with another party or two in regard to selling them; then later, some time in November—it was after the election—I was coming in from the East, and Mr. Chapman was going out West—going to Portland, I think—and we met there on that early morning train—I got off at Nampa to come into Boise, and he got off to go out to Portland; we walked up and down the platform there talking, and he named a certain price for them, in advance of what he had offered me, and said that he had instructed the clerk in the office that if I brought a deed up there during his absence to give me that amount of money for them. I saw this other party, after I came back to town, that I negotiated with before, and he wouldn't give me the \$6,000, so I thought the matter over a day or two, and took the deed up and got the money.

Q. Mr. Martin, did you ever negotiate with any other officer or agent of the Barber Lumber Company with reference to this?

A. No; all my negotiations were with Mr. Chapman.

Q. Did you ever negotiate with him prior to the time you have told us about?

A. The first time was in the convention.

Q. And at that time you had already purchased the claims from the three parties?

A. Yes.

Q. Not Mrs. Mary Martin's?

(Testimony of Frank Martin.)

A. No, the other three.

Q. Two of these people, it seems, Mrs. Weston and Mrs. Martin, are relatives of yours?

A. Yes, one is my sister in law and the other is my niece.

Q. Did you suggest to them filing upon these lands?

A. No, I did not.

Q. You knew of it at the time they were going to file, of course?

A. Yes, certainly. The talk about it was between my brother and myself, about his wife taking a claim, and then the other one that Lee Martin was going to take was the one that Mrs. Weston afterwards took; he didn't take it, and my brother took Mrs. Weston and showed her the claim and located her on it.

Q. Was the Barber Lumber Company, or any officer or agent of the Barber Lumber Company, cognizant of or interested in the filings being made by your relatives or those people?

A. Not the least in the world, Mr. Bundy.

Q. Did you at any time present a bill to Governor Steunenberg, either orally or in writing, or make any demand upon him for payment of any money for services in the contest cases or appeals?

A. I never did.

Q. Did you ever at any time ask him for any money, except by the instrumentality of the draft for a copy of this testimony about which you have testified?

A. That is all.

Q. Were you ever at any time paid any money for services in these matters by Governor Steunen-

(Testimony of Frank Martin.)

berg? A. I never was.

Q. Mr. Martin, do you know a man by the name of Junius Wright, who formerly lived here?

A. Yes.

Q. I handed you yesterday a transcript of his evidence in this case. You have read that over, have you?

A. Yes, I have read it over.

Q. I call your attention to that portion of his evidence in which he testified that Governor Frank Steunenberg asked him, Wright, to go up into your office, and that Governor Steunenberg and Wright did go up into your office, and then testified, "After we got there in Frank Martin's office he (referring to Governor Steunenberg) went to a safe in one corner of the office and did something—I did not notice what." The next question is, "Who, Martin or Steunenberg?" The answer is, "No, Governor Steunenberg." Then he testified, "Then he handed this receipt to Mr. Martin and asked him (Martin) his opinion about it, and Martin said he thought that receipt would cover everything, and then Mr. Steunenberg called me into an inner room, where I found Mr. Wells seated at the table." Mr. Martin, I will ask you as to whether or not that transaction took place?

A. I wouldn't say absolutely positively that Junius Wright and Governor Steunenberg never did come to my office together, but that is my best recollection; I don't think they ever did come to my office together in their lives. I have absolutely no recollection whatever of this transaction that you speak

(Testimony of Frank Martin.)

of. I don't remember Governor Steunenberg ever showing me a receipt in connection with Mr. Wright at any time and asking me if it was all right. The incident of the safe couldn't have happened, because at that time I didn't have a safe in my office, and, as I say, I don't remember the two of them ever coming to my office together; I don't think they ever did.

Q. Your recollection of the fact that you didn't have any safe in your office at that time is clear and certain?

A. Yes, I am positive of that.

Q. You had had one before and sold it?

A. I had none at that time.

Redirect Examination.

(By Mr. GORDON.)

Q. At what time is this that you speak, Mr. Martin? You say you didn't have one at that time?

A. The summer of 1905—I read Mr. Wright's evidence yesterday—or the spring of 1905, rather.

Q. Where did you keep your papers at that time?

A. At the Capital State Bank, kept the more important ones, and I had a metal filing case that I kept the others in.

Q. You had a metal filing case at that time, did you?

A. Yes.

Q. Did Governor Steunenberg, during his lifetime, keep a number of papers in your office?

A. No, nothing except copies of mining contracts, or something of that kind, that I prepared for him; he would sometimes keep them there. He would take options on mining ground—he was a kind of a mining promoter—he would take options to pur-

(Testimony of Frank Martin.)

chase, and options to sell, and I prepared a good many of those things for him.

Q. He didn't have an office of his own at Boise?

A. No; he would very often leave them there at my office after they were prepared and signed up.

Q. And, as a matter of fact, he used your office as his office whenever he was in town, didn't he?

A. Well, he had any use of my office that he desired. He frequented my office, and he frequented Mr. Borah's office, and Mr. Hawley's office, a good deal, the three offices, and he felt absolutely at home, I think, in either office, and I think he kept a good many of his papers distributed around, such as I have described, some in Borah's office and some in Mr. Hawley's office, and some in my own, and I think he would drop in on either of us if he had anything to do and have it done.

Q. You had some such papers as that in your possession, belonging to Governor Steunenberg, at the time referred to by Mr. Wright in his testimony, did you not?

A. Yes; I think probably I have some of them yet.

Q. Where were you keeping them at that time—in this metal filing case?

A. They would be in this metal filing case.

Q. Will you describe this metal filing case?

Mr. BUNDY.—It don't look anything like a safe.

A. It is about five feet and a half high.

Mr. GORDON.—Q. How wide?

A. About four feet wide; has two or three or four

(Testimony of Frank Martin.)

rows of letter-files; then it has a row of these shoved in files, with handles on them; then it has below boxes that you can lock up.

Q. Is there a door that pulls down in front like a roll-top desk?

A. No, there is no door at all. And the Governor wouldn't have known—I would have filed those papers away—he wouldn't have known where they were; he could have asked me about them.

Mr. BUNDY.—Q. Did he have a particular file that he could go into himself? A. No.

Mr. GORDON.—Q. You say when Governor Steunenberg was talking with you in relation to having a copy of the transcript of the record made for him, that he stated his reasons for wanting a copy were that he was buying some timber for the Barber Lumber Company. Did I understand you to say that?

A. Either that he had bought or had caused to be bought.

Q. At the time that you drew that draft on Frank Steunenberg as agent, did you know for whom he was agent?

A. No, I don't believe that I did, Mr. Gordon; in other words, I didn't know whose money he had deposited in the bank in his name as agent, and of course where I would be told to draw on somebody as agent that would be notice to me that he had an account there as agent, but I didn't know whose money it was.

Q. Do you remember the date that you conveyed

(Testimony of Frank Martin.)

these four titles that you have referred to here in your testimony to the Barber Lumber Company?

A. No, I don't remember the exact date, but I think it was—I am quite positive about that—it was in November, 1906.

Q. And all the deeds were made the same day?

A. It was one deed; I conveyed the four claims to the Barber Lumber Company in one deed.

Q. Do you remember how many days before you made that deed you had secured the title to Mrs. Mary Martin's claim?

A. No, I don't, but it seems to me it must have been a month, though I am not sure as to that.

Q. Wasn't it nine days?

A. I wouldn't be sure about that, Mr. Gordon; it doesn't seem to me it was that short a time, but it might have been.

Mr. GORDON.—I haven't the deeds.

The WITNESS.—I haven't the dates, so I couldn't tell.

Mr. GORDON.—My recollection of when I saw the deed is that it was nine days from the date of the deed of Mary J. Martin to you to the date you made the deed to the Barber Lumber Company.

Mr. BUNDY.—I can give you the dates; Mary Martin deeded September 28, 1906; Simpson deeded to Martin August 24, 1906; Eleanor A. Phelps deeded to Mr. Martin January 13, 1906, and Mrs. Weston deeded to Mr. Martin January 12, 1906. Mr. Martin conveyed to the Barber Lumber Company November 7, 1906.

(Testimony of Frank Martin.)

Mr. GORDON.—Q. Did you ever represent any other claimants in contest cases before the land office in which Governor Steunenberg was in any way interested, other than these four that you have just mentioned?

Mr. BUNDY.—I object to that as assuming that Governor Steunenberg was interested in these.

Mr. GORDON.—I have qualified my question as much as I could; he has shown enough interest to have a copy of the record made.

A. I don't know just whether you would call it a proceeding or not, I started on, was ready to start a proceeding when the matter was compromised, at one time.

Q. Were you ever paid any fee for that?

A. I can hardly say whether I was or not.

Mr. BUNDY.—What matter was that?

A. There was an old man here that had a mine up in the Basin, and somebody had located a timber claim that took in his mine, and he made proof, and final receipt had been issued, and I don't know whether the claim had been sold or not; anyhow I represented the old man who had the mine, and was going to start a proceeding in the matter to have a hearing, and the old man and the Governor came to me and told me that the Governor had bought the mine, and they wanted the matter dropped; as I remember, I prepared the papers transferring the mine to the Governor, and charged the old man \$100, which the Governor was to pay. The Governor gave me some money at different times, but he never paid me

(Testimony of Frank Martin.)

for all I did for him; he owed me quite a good deal when he died.

Q. When was this, Mr. Martin?

A. I couldn't tell you the date.

Q. What year?

A. The Governor went to work and worked the mine, and spent a good deal of money running a tunnel in it, and then there were a lot of claims out against it, and I went to work and settled that up for them—I think I settled that up for them in the spring of 1904 or 1905, I wouldn't be sure which now—and so it must have been 1903 that he bought the mine.

Q. Who was this old gentleman?

A. I was just trying to think of his name; he was an old man that worked up here in the Capital Building, came from Hailey over here, and worked there on the lawn, took care of the lawn during the summer, and run the furnace during the winter; I could find out his name at the office; there were a lot of people here in town who knew him—he was a little hump backed. You probably remember the man, Judge Morgan, who took care of the lawn up there along about 1900 or the 90's?

Q. Did you file any papers in the land office in this case that you refer to? A. No.

Recross-examination.

(By Mr. BUNDY.)

Q. I don't think the record shows very clearly, Mr. Martin, this last transaction you have testified about. You were employed by this old gentleman,

(Testimony of Frank Martin.)

whose name you have forgotten, to bring some proceeding to set aside a timber and stone claim which had been entered, and which had gone to final proof, and which had included within its boundaries his mine?

A. Yes, to at least have that portion of it cut out which included his mine.

Q. You were employed by this gentleman for that purpose? A. I was employed by the old man.

Q. And the purpose was, not to procure, but to modify a timber and stone claim? A. Yes.

Q. Now, as I understand it, while that was pending Governor Steunenberg bought out his mine before you had filed anything in the land office?

A. Yes.

Q. And as a part of the transaction Governor Steunenberg, and as a part of the purchase price, was to pay you your fees?

A. Was to pay me the \$100 which I charged the old man.

Q. So he was paying it for the old man?

A. That is all; that was part of the consideration; he paid the old man so much for the mine, and was to pay my fee in the matter in addition.

Q. And Governor Steunenberg did pay you the \$100, did he?

A. Governor Steunenberg gave me money at different times, whether it would apply on that particular hundred dollars or anything else—I drew a number of mining contracts for the Governor, and I settled up two or three mining matters for him,

(Testimony of Frank Martin.)

went up to Atlanta, and, as I say, on a settlement, charging any reasonable fees for those things, he owed me quite a little at the time he was assassinated.

Q. There was no suggestion or intimation that Governor Steunenberg was buying this mine for the Barber Lumber Company?

A. No; he went to work and spent some four or five thousand dollars driving a hole in it to see if there was any gold there.

Q. Mr. Martin, I show you a check, dated Caldwell, Idaho, July 6, 1904, addressed to the Commercial Bank, which reads, "Pay to the order of Frank Martin \$100.00, One Hundred Dollars. (Signed) Frank Steunenberg, Agent." Endorsed on the back, "Pay to Peter Sonna, Frank Martin." Also endorsed by Peter Sonna, and the bank stamp, July 6, 1904. That is Governor Steunenberg's signature, is it? A. Yes.

Q. I will ask you, Mr. Martin, as to whether or not that check for \$100 was paid to you for or on account of any services which you rendered in the four contest cases of Anderson, Ball, Hunter, and Wells, or in the subsequent appeals which were taken in the proceedings? A. It was not.

Redirect Examination.

(By Mr. GORDON.)

Q. How do you know it wasn't, Mr. Martin?

A. Because Governor Steunenberg never had anything to do with those appeals, never promised to pay me anything, never owed me anything for it.

(Testimony of Frank Martin.)

Q. He gave you a hundred and ninety odd dollars, though, to get the transcript in those cases, didn't he?

A. Yes.

Q. This money that Governor Steunenberg paid you in this mining deal, that was his personal affair, wasn't it?

A. Yes.

Q. And you wouldn't say that he gave you this check, Frank Steunenberg, Agent, in payment for that, would you?

A. He might have done so.

Q. What did he say to you when he gave you this check?

A. He didn't say anything. The circumstances of that check being given were this: I took sick in the latter part of February, 1904, and was in bed until about the middle of April, or a little later, and after I got up I went to my office and worked quite a little every day, but was in very bad condition, continued the doctor's treatment, and the doctor advised me that I would have to give up my office work entirely, which I declined to do; then he suggested to me that if I would take a vacation I might get all right; and Governor Steunenberg was up here in Boise, came up on the evening of the 4th, I think I saw him; the 5th I don't think I saw him; the morning of the 6th he came to my office, and he knew that the doctor had insisted that I should take a vacation, and he and I were talking about it; and I sat about the middle of my table, which is much longer than these, and he sat over at the end, and I told him I had been disappointed in getting some money that I had expected to

(Testimony of Frank Martin.)

get, and he said "I can give you some money," and he took out his check-book out of his pocket, and sat there at the end of the table and wrote this check, signed it, and handed it over to me. That is the full conversation in regard to this check.

Q. The whole fee that Governor Steunenberg owed you was \$100?

A. It would have been just this amount.

Q. \$100?

A. Yes, just \$100; but Governor Steunenberg also owed me for other work. Governor Steunenberg, on an ordinary settlement of our business at that time, at the time he gave me this check, would probably have owed me four or five or six hundred dollars.

Q. But they weren't for any contest cases in the land office?

A. No, not a cent of it.

(Witness excused.)

At this time an adjournment was taken until two o'clock, at which time, pursuant to adjournment, court met, the Examiner and counsel being present, at which time a further adjournment was taken until ten o'clock, A. M., Wednesday, June 2, 1909.

Court met at ten o'clock, A. M., Wednesday, June 2, 1909, pursuant to adjournment, the Examiner and counsel for the respective parties being present.

[Testimony of Robert F. McAfee, on Behalf of the Complainant (in Rebuttal).]

ROBERT F. McAFEE, produced on behalf of the complainant as a witness in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Mr. McAfee, you are the cashier of the First National Bank of Boise, are you? A. Yes, sir.

Q. I will ask you if you have with you the account of John Kinkaid, agent, with that institution.

A. Yes.

Q. What period does that account cover?

A. As shown by the statement here, November 6, 1901, I believe would be the first entry; shows a balance on December 31, 1904.

Q. That runs from November 6, 1901, down to and including what date?

A. December 31, 1904.

Q. And that shows all the deposits made by John Kinkaid as agent during the period mentioned, does it not?

A. It shows a complete statement of his account during that period.

Mr. GORDON.—We offer that in evidence.

Mr. BUNDY.—Before the document is admitted in evidence, I want to ask a few questions.

(Testimony of Robert F. McAfee.)

Cross-examination.

(By Mr. BUNDY.)

Q. Mr. McAfee, this statement that you have brought, marked "John Kinkaid, Agent," seems to show certain deposits on the credit side in gross amounts—it doesn't show what those deposits consisted of? A. Yes.

Q. Do you know, or have you any means of knowing, whose agent John Kinkaid was, as far as this account is concerned?

A. Not that I know of.

Q. Do you know whether it was as the agent of one person, or several?

A. I haven't any idea at all; the account was opened with John Kinkaid, Agent, and checked against that way.

Q. The checks drawn against it were not John Kinkaid, Agent, were they?

A. I don't remember positively; I think they were just signed John Kinkaid, although I am not positive about that; the vouchers have all been returned to Mr. Kinkaid.

Q. Well, this account was opened with Kinkaid in November, 1901, as it appears here, with John Kinkaid, Agent; then it seems to have been run along for a period of several years, and I will ask you as to whether or not you know whether the money deposited here was money he held as agent, or whether it was personal money?

A. I haven't any idea; he came in and deposited the money; there are some of those deposits that I

(Testimony of Robert F. McAfee.)

have taken myself, personally; I remember some of them; but there was no question at all about it; I think he had an account previous to this time as John Kinkaid, and the account was continued—I don't think there was any change on the book at all, except that he requested it to be made agent. I don't know whether he had become involved in his mining interests up here and did it to avoid attachment or not.

Q. But it was simply, at his request, changed, in November, 1901, to John Kinkaid, Agent?

A. Yes.

Q. And from that time on—

A. There was never a change that I know of in his signature.

Q. Mr. Kinkaid, drawing against this account, drew all kinds of checks, personal, small and large?

A. It is shown there in the statement what the checks were.

Q. Have you any recollection?

A. The checks are itemized there, Mr. Bundy; each check is shown there on the statement.

Q. The amount.

A. That is the only record we have of any checks.

Q. Have you any recollection, Mr. McAfee, outside of this here, as to the character of the checks he was drawing, whether it was personal bills, or all kinds of checks?

A. I would never pay any attention to that.

Q. Then you have no means of knowing, and don't mean to testify, that this account of John Kin-

(Testimony of Robert F. McAfee.)

kaid, Agent, was his account as agent for the Barber Lumber Company?

A. I don't know that it was.

Q. Or as agent for Frank Steunenberg?

A. I don't know that it was as agent for anyone, except that the account was requested to be made with John Kinkaid, Agent.

Q. And, of course, you have no independent recollection of who furnished the money, or what checks were deposited here to his credit? A. I do not.

Q. Don't you recall, Mr. McAfee, that after the first short period of time here, Mr. Kinkaid drew checks against this account, and always drew them in his own name? A. Yes.

Q. Do you recall the time he was buying land and issuing checks up in the Crooked River country to a large extent? A. Yes.

Q. And don't you recall that all those checks were drawn simply as John Kinkaid? A. Yes.

Q. But were always charged against this agent account? A. Yes.

Q. Did you ever have any specific instructions to do that, or was it just a continuation?

A. Just a continuation of the old account.

Q. So the substance of your evidence is, Mr. McAfee, that while the record of John Kinkaid's transactions with your bank were kept under this account entitled, "John Kinkaid, Agent," yet as against that account was charged his personal checks and everything else.

(Testimony of Robert F. McAfee.)

A. The checks were all charged to the one account.

Mr. BUNDY.—That is all.

Mr. GORDON.—Before I put that in I will mark it Complainant's Exhibit Kinkaid Account No. 3, and desire to have it copied into the record, as follows:

**[Complainant's Exhibit Kinkaid Account No. 3
(Copy).]**

"CANCELLED CHECKS RETURNED HEREWITH.

Boise, Idaho, Dec. 31st, 1904.

John Kinkaid, Agent,

In Account with THE FIRST NATIONAL BANK OF IDAHO.

Please examine and report as soon as convenient.

Dr.

Cr.

1901

Nov. 6	Checks	50	Nov. 6	Deposit	\$1250
7		22	12	"	480
9		225	18	"	100
11		80	Dec. 4	"	37.25
13		22.50	4	"	21.75
16		145.40	14	"	200
16		50	20	"	210
19		180	1902		
19		14.50	Jan. 2	"	120
21		20	27	"	1000
23		30	Feb. 10	"	4480
25		10	Mch 3	"	1000
25		64.75	10	"	4000
26		100			
29		175			
Dec. 3		37.40			
4		10			
4		25			
5		165			
6		140			
10		2000			
10		42.50			
10		11.50			
10		16			

Dr.

Cr.

12	45
14	27
19	415
23	27.50
23	9
26	100
27	9
27	70.75
30	15
30	75

1902.

Jan. 2	6.75
2	78.70
3	4.50
4	25
29	1000

Feb. 4	25
11	15
12	95
12	2200
20	950
21	30
24	11.35
24	350
24	10
24	510
25	25
28	10
28	20
28	50

Mch 1	125
3	25
4	25
6	850
6	25.75
8	10
10	140
10	50
10	850
12	50
12	830
13	830

Amount forwarded

13,656.85

Amount forwarded

15,052.25

Dr.

Cr.

1902.

1902.

Amt. brot. forward		13,656.85	Amt. brot. forward		15,052.25
Mch. 14	Cheek	225	Mch. 19,	Deposit	3,000.00
17		10	28		375
17		50	Apl. 11	" (In lead	240
17		60		pencil)	
18		418		18667.25	
18		60	May 17	Deposit	110
19		1,250	June 18	"	1,000
20		1,250	19	"	200
21		13	July 2	"	200
21		31.10	26	"	100
21		20	Aug. 23	"	750
21		500	Sep. 5	"	250
22		16.90	Dec. 4	"	500
22		200	16	"	60
24		25.50			
29		21.75			
31		15			
Apl. 1		25			
1		15			
1		60			
2		10.25			
2		30			
3		25			
7		230			
9		20.30			
11		410			
16	(pencil)	18663.65			
June 20		215			
20		250			
21		50			
21		250			
26		250			
26		23.50			
27		25			
30		60.50			
July 2		33.75			
3		17			
14		15			
17		200			
21		100			
28		28.75			
Aug. 9		24.70			
12		39.50			
Sep. 10		300			
16		10			

3183

Cr.

1902.		
	Amt. brot. forward	21,837.25
Dec. 23	Deposit	200
27	"	750
1903.		
Feb. 5	"	2,500
9	"	2,155
11	"	6,000
11	"	2,400
11	"	1,600
12	"	6,000
12	(pencil)	
	49,422.25	6,000
13	Deposit	420
13	"	4,000

Dr.

Cr.

	29	20
Feb.	3	50
	6	510
	6	100
	6	147.63
	6	14
	6	150
	6	221.05
	6	405
	7	15
	9	773.72
	9	1,400
	9	100
	9	27
	10	100
	10	25
	10	14
	11	362.50
	11	362.50
	11	219.15
	11	800
	12	24
	12	75
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	800
	12	1,600
	12 (pencil)	42224.45 1,600
	13	735
	13	400
	13	800
	13	800
	13	800
	13	800

 46,559.45

 53,862.25

vs. The Barber Lumber Company.

3185

Dr.

Cr.

1903.			1903.		
Amt. Brot. Forward			Amt. Brot. Forward		
Feb.	13	800	Feb.	16	Deposit 63.31
	13	800		16	" 4,000
	13	800		17	" 4,000
	13	800		18	" 4,000
	14	755		20	" 2,400
	14	800		20	" 100
	14	800		21	" 2,500
	14	800			(pencil)
	14	1,600			70,925.56
	16	800	Mch.	14	Deposit 4,000
	16	800		19	2,400
	16	800			
	16	800			
	16	800			
	16	400			
	17	13.25			
	17	143.05			
	17	800			
	17	800			
	17	800			
	17	800			
	18	800			
	18	800			
	18	800			
	19	45			
	20	100			
	20	800			
	20	800			
	21	25			
	21	233			
	21	18			
	21	101			
	21	735.25			
	21	150			
	21	150			
	21	100			
	23	29.10			
	24	47.15			
	26	120			
	27	50			
	27	8.70			
	27	800			
	28	90			
	28	58			

Dr.

Cr.

Mar.	2	4.10
	5	50
	6 (pencil)	69235.05
	7	700
	7	50
	9	200
	10	25
	11	35
	12	800
	12	10
	13	165
	13	800
	13	800
	13	800
	13	800
	16	20
	18	2,075
	20	600
	21	20
	21	500

 77,655.05

 77,325.56

1903.

Amts. Brot. Forward		77,655.05
Mch.	23	25
	23	850
	24	50
	24	32.75
	24	800
	25	800
	25	800
	25	800
	25	800
	25	800
	25	385
	27	650
	27	50
	28	800
	30	25
Apl.	7	3,313
	7	50
	7	25
	7	25
	13	50
	16	200
	20	25
	20	5
	21	76.70

1903.

Amts. Brot. Forward		77,325.56
Mch.	24, Deposit	3,200
	25	4,800
Apl.	6	4,000
May	15	2,000
June	6	80
	9	760
July	1	320
	8	110
	18	1,600

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3187

Dr.

Cr.

23	60
23	32
May 4	25
4	30
5	50
5	16.70
10	10
13	1,600
13	312.50
15	722.50
20	15
21	59.75
June 8	25
8	22.65
9	10
11	10
15	100
July 2	40
3	32.20
3	20
3	50
6	3.50
6	25
6	75
8	80
10	10
11	5
11	9
13	100
14	800
14	42.50
17	15
18	20
20	260
22	300
27	10.15
Aug. 1	800
4	35.35
4	2

94,978.30

94,195.56

Dr.

Cr.

1903.			1903,		
Amt. brot. forward		94,978.30	Amt. brot. forward		94,195.56
Aug. 6,	Checks	8	Aug. 11,	Deposit	250
6	"	25	13	"	38
11	"	38	17	"	4,200
11	"	50	Sep. 6	"	1,600
12	"	25.15	16	"	1,600
17	"	1,700	19	"	1,000
17	"	1,000	Oct. 1	"	250
18	"	21	13	"	5,600
24	"	47.50			
28	"	172.55			
31	"	40			
Sep. 1	"	3.15			
1	"	500			
6	"	1,000			
6	"	37			
6	"	10			
6	"	20			
6	"	500			
10	"	25			
13	"	40			
14	"	10			
14	"	10			
15	"	20			
16	"	7.90			
16	"	20			
16	"	5.05			
17	"	100			
17	"	6			
17	"	20			
17	"	10			
18	"	1,450			
19	"	50			
21	"	List 573.75			
22	"	75			
22	"	8.35			
25	"	10.50			
26	"	77.85			
28	"	46			
29	"	100			
Oct. 1	"	125			
1	"	125			
1	"	14			
2	"	18			
2	"	20			

vs. The Barber Lumber Company.

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Dr.

Cr.

2	"	50
2	"	2
2	"	30
3	"	10
3	"	3.15
7	"	45.40
8	"	25
9	"	33.75
13	"	16.50
13	"	850
13	"	125
13	"	90
14	"	80
15	"	801
16	"	1,600
16	"	300
20	"	50
20	"	30.60
21	"	6
22	"	15

107,306.45

108,733.56

1903.

	Amt.	Ford.	
Oct. 24,	Checks	30	107,306.45
24		25	
27		32	
28		28.95	
29		200	
30		150	
31		20.50	
Nov. 2		200	
3		40.10	
3		15.20	
4		538	
4		387	
4		3.50	
5		25	
5		1,400	
5		2	
6		4	
6		700	
6		450	
7		200	
9		825	
20		90.25	

1903.

	Amt.	Ford	
Nov. 4,	Deposit	1,650	108,733.56
"		2,000	
"		400	
25		2,000	
Dec. 1		50	
5		800	
16		1,600	
23		4,800	
29		3,200	
1904.			
Jan. 2		3,080	

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The United States of America

Dr.

Cr.

20	19.25
21	83.25
21	500
25	150
27	600
27	23
28	525
28	10
Dec. 1	5.20
1	150
1	425
1	150
1	200
1	32.25
2	2
3	40
3	25
5	225
7	3
7	500
7	10
14	4
17	1,500
23	375
23	2,300
24	1,500
29	2,500
30	700
1904.	
Jany. 2	1,900
4	250
4	50
5	44
5	25
6	370
6	21
6	50
7	24.75
7	6.55
8	20.45
9	20
9	5
11	50

128,066.65

128,313.56

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Dr.

Cr.

1904.			1904		
Amt. Forward		128,066.65	Amt. Ford.		128,313.56
Jany. 13,	Checks	115	Jany. 18,	Deposit	280
15		25	Feb. 8	"	400
15		60	15	"	5,600
16		315	23	"	256.50
20		25	29	"	1,050
21		290	Mch. 1	"	800
22		400	2	"	50
Feb. 1		725	4	"	800
2		500	Apl. 12	"	1,250
2		756	28	"	1,000
3		19	June 13	"	400
5		412.50	Aug. 17	"	450
10		705			
11		500			
13		115			
13		750			
13		25			
16		10			
16		5			
16		40			
17		3			
18		17.50			
18		25			
23		440			
23		7.90			
23		13.25			
24		10			
24		750			
26		25			
26		23			
29		15			
29		1,000			
Mch. 1		750			
1		50			
2		37.25			
3		25			
3		800			
4		12			
5		9.25			
5		10			
9		2.20			
Apl. 7		10			
13		450			

Dr.

Cr.

13	40.50
13	135
14	50
16	25
16	50
29	1,000
29	50
May 2	25
4	27.75
6	15
6	25
7	2
11	10
26	210
June 13	110
13	190
Aug. 4	2.93
17	15.80
18	50
22	10
Y 22	7

140,395.48

140,650.06

(9)

1904.

1904.

Amt.	140,395.48	Amt. Brot. Ford.	140,650.06
Aug. 23, Checks	10	Sep. 28 Deposit	500
23	14.20	Oct. 26 "	210
25	50	Nov. 10 "	480
26	27	Dec. 3 "	25
Sep. 7	50	21 "	400
7	50		
8	27.55		
8	25		
13	40		
14	17.10		
14	20		
14	25		
14	21.60		
Oct. 6	25		
10	20		
15	50.10		
19	20		

vs. The Barber Lumber Company.

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Dr.

Cr.

	20	50
	26	111.45
Nov.	5	30
	5	40
	7	25
	7	20
	7	40
	10	50
	11	60
	11	25
	11	50
	11	40
	11	46.15
	12	46.15
	14	20
	16	50.10
	19	90
	21	10
	22	37.20
	22	40
	25	8
	25	22
	28	35
Dec.	21	100
	21	68.25
	21	30
	21	21.15
	21	84.50
	24	10
	24	4.75
	28	9
	31	20

Balance (red ink) 83.33

(Pencil) Bal 83.33

142,265.06

142,265.06

1904.

Dec. 31 Balance

83.33

(Testimony of Robert F. McAfee.)

Redirect Examination.

Mr. GORDON.—Q. Mr. McAfee, have you with you the account of the Barber Lumber Company with the First National Bank of Boise, Idaho?

A. If you refer to this statement here, account of the Barber Lumber Company, Frank Steunenberg, agent.

Q. What is that account—explain it.

A. It is an account we carried on our books, initial deposit June 27, 1903, Barber Lumber Company, Frank Steunenberg, Agent, showing four deposits.

Q. What are those deposits?

A. June 24, 1903, \$50,000; December 14th, \$10,000; December 28th, \$12,600; February 3d, 1904, \$6,600.

Q. Have you any recollection how that account was opened and how that first deposit of \$50,000 was made?

A. I believe the first deposit of June 24th, was a telegraphic transfer from the Continental National Bank of Chicago.

Q. That was the \$50,000 transaction?

A. \$50,000.

Q. Were the instructions in that telegram that drafts or checks by Frank Steunenberg would be honored or paid out of that account?

A. I don't believe—I believe it was transferred to the Barber Lumber Company.

Q. Just a transfer to the Barber Lumber Company of \$50,000. Then when was the Frank Steun-

(Testimony of Robert F. McAfee.)

enberg, Agent, attached to it?

A. I don't remember; that is the way the account was originally opened.

Q. How?

A. Barber Lumber Company, Frank Steunenberg, Agent.

Q. And in that way you would honor drafts or checks drawn either by the officers of the Barber Lumber Company, or Frank Steunenberg, as agent?

A. I don't remember any signatures otherwise than Steunenberg's, although there may have been; that is a number of years past; I wouldn't remember what signature were attached to the checks.

Q. Now, do you remember any of the items that are charged to that account, Frank Steunenberg, whether they were checks or drafts, or to whom they were drawn?

A. No, I do not; I have no recollection of that.

Q. There is an item there of August 5, 1903, for \$8,000 credit.

A. What day is that?

Q. I have August 5th; it may be a day later.

A. August 6th, \$8,000.

Q. Do you know what that item was?

A. I do not know what the item was, excepting a conversation with you last night. I don't know positively that there was such, but when you were asking me about an exhibit there as coming from the Caldwell Banking & Trust Company, dated August 5th, stating they had sent it to us for collection, we show a credit to them on the following day of that amount.

(Testimony of Robert F. McAfee.)

Q. You haven't any independent recollection?

A. No.

Q. Other than the conversation with me that I had some items of another bank, and your records showed, a day later, a corresponding amount.

A. A corresponding amount a day later.

Mr. BUNDY.—What statement was it that Mr. Gordon made?

Mr. GORDON.—If you will look there at that account, you will find here that a day after each one of these—

Mr. BUNDY.—What has that got to do with it anyway?

Mr. GORDON.—Nothing; only I am trying to find out whether there is any inconsistency in the accounts of the Northwestern Lumber Company and these Steunenberg accounts that I have, and by putting these in, it accounts for those items as having been charged to that \$50,000 that you had forwarded here to Steunenberg's credit; that is all; the account there shows it. I wanted an explanation of those items, that is all; he can't do it, so I will get the Caldwell Bank.

Q. Does that statement that you hold cover all the items of deposit and checks drawn against the account of the Barber Lumber Company, Frank Steunenberg, Agent, for the periods set forth in that account?

A. It is a complete statement of the account.

Q. From what date?

A. June 27th, 1903, to date, for that matter.

(Testimony of Robert F. McAfee.)

Mr. GORDON.—We offer that paper in evidence, marked Complainant's Exhibit Marked Barber Lumber Co., Frank Steunenberg account No. 1, as follows:

**[Complainant's Exhibit B. L. Co., F. Steunenberg
Acct. No. 1 (Copy).]**

**"CANCELLED CHECKS RETURNED HERE-
WITH.**

Boise, Idaho, ——— 190—

Barber Lumber Co.

Frank Steunenberg, Agt.,

In Account with THE FIRST NATIONAL BANK
OF IDAHO.

Please Examine and Report as soon as Convenient.

Dr.				Cr.			
1903.				1903.			
June 27	Check	500		June 24	Deposit	50,000.	
27	"	26,750		Dec. 14	"	10,000	
29	"	2,550		28	"	12,600	
July 2	"	5,100		1904.			
6	"	50		Feb. 3	"	6,600	
Aug. 6,	"	8,000					
Sept. 24	"	1,000					
Oct. 24	"	700					
24	"	5,000					
Dec. 18	"	5,000					
24	"	4,500					
30	"	5,000					
30	"	2.75					
30	"	2,500					
31	"	122.16					
1904.							
Jan. 2	"	42					
5	"	5,000					
Feb. 15	"	5,600					
Aug. 11	"	1,700					
Balance (red ink)		83.09					
		79,200				79,200	
				Balance		83.09"	

(Testimony of Robert F. McAfee.)

Mr. GORDON.—Q. Mr. McAfee, would your bank have honored a draft or check drawn by W. E. Borah, agent, on the First National Bank of Boise, and endorsed by Frank Steunenberg, out of this account which you have just identified?

A. I never had any authorization to do anything of that kind.

Mr. BUNDY.—You are mixed on that, Gordon; he didn't draw any draft; the money was sent to him directly.

The WITNESS.—You are asking a question there, Mr. Gordon, if you will allow me, if Mr. Borah—you say Borah, as agent; now he might be agent for half a dozen things. If he had an account as W. E. Borah, agent, that, of course, would be paid.

Mr. GORDON.—I am speaking, would it have been paid out of the account I have just shown you, the last account, if it were endorsed by Frank Steunenberg?

Mr. BUNDY.—Steunenberg was out of town, and there was some land they wanted to buy, and Steunenberg had the money, and Borah drew a draft.

The WITNESS.—Steunenberg's endorsement was the same thing as his signature to the draft.

(Witness excused.)

**[Testimony of William Balderston, on Behalf of the
Complainant (in Rebuttal).]**

WILLIAM BALDERSTON, produced by complainant as a witness in rebuttal, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. KEIGWIN.)

Q. You are Mr. William Balderston?

A. Yes, sir.

Q. And you are register of the United States Land Office at Boise? A. I am.

Q. And as such, you have, I take it, the custody and possession of the records of that office.

A. The register and receiver have joint custody.

Q. You have there a book, Mr. Balderston. Will you state to the Examiner what that book is?

A. This is a file of letters from the Commissioner of the General Land Office.

Q. And how is that book made up?

A. This book is made up of letters that come from the Commissioner, with the instructions the Commissioner may send us, for filing.

Q. As I understand, these letters are by you received officially from the Commissioner of the Land Office, and are made up into a bound volume?

A. Yes.

Q. Have you there, Mr. Balderston, the letters of the Commissioner of the General Land Office transmitting to this office the decisions rendered by the Secretary of the Interior in the cases of James

(Testimony of William Balderston.)

T. Ball, Arthur Anderson, Harvey H. Wells, and Abel E. Hunter?

A. I think they are all here.

Q. Will you look, please, and see if you find all those letters?

A. One here transmitting departmental decision in the case of United States vs. Arthur Anderson.

Q. Will you state what is the date of the Secretary's decision, the Commissioner's letter of transmissal? A. The date is May 24, 1905.

Q. What else have you there?

A. What other cases, you mean?

Q. Yes.

A. I have a similar record in the case of James T. Ball.

Q. What is the date of the Secretary's decision in that case? A. The same date.

Q. And now anything else, Mr. Balderston?

A. A similar record in the case against Abel Edward Hunter.

Q. United States against Hunter?

A. Yes.

Q. Of the same date?

A. Yes, the same date.

Q. And have you anything else?

A. Two letters here.

